TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 52.

SALLIE FIELD SCOTT, ELIZA MADISON SCOTT, HARRIETT B. JONES, ET AL., APPELLANTS,

vs.

LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED JUNE 6, 1904.

(18,988.)

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UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1902, and held in the court room of said court, in the city of New Orleans, before the Honorable Don A. Pardee, the Honorable A. P. McCormick; and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

SALLIE FIELD SCOTT ET AL., Appellants,
versus
LIZZIE W. CAREW ET AL., Appellees. } No. 1160.

Be it remembered that heretofore to-wit: on the 3rd day of May, 1902, a transcript of the record of the above styled cause from the circuit court of the United States for the southern district of Florida, was filed in the office of the clerk of said United States circuit court of appeals for the fifth circuit, in the words and figures following, to-wit:

1 In the Circuit Court of the United States for the Southern District of Florida. In Chancery.

SALLIE FIELD SCOTT, ELIZA MADISON SCOTT, HARRIETT B. JONES, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Maria Hackley, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, and Stephen P. Hackley, Complainants,
versus
LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, M. G. GIBBONS, M. M. Nelson, E. B. Beach, S. Y. Finley, and George W. Hall, Defendants.

Bill of Complaint.

Counsel for complainants:
Fleming & Fleming, Jacksonville, Florida.
Wm. H. & George H. Lamar, Washington, D. C.
Munford & Anderson, Richmond, Virginia.

2 In the Circuit Court of the United States for the Southern District of Florida. In Chancery.

SALLIE FIELD SCOTT, ELIZA MADISON SCOTT, HARRIET B. JONES, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Maria Hackley, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley, and Stephen P. Hackley

versus

LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, M. G. GIBBONS, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall.

To the honorable judges of the circuit court of the United States for the southern district of Florida:

Sallie Field Scott, a widow, a citizen of the State of Virginia, residing in Orange county, in said State; Eliza Madison Scott, a widow, a citizen of the State of Virginia, residing in Powhatan county, in said State; Harriet B. Jones and Freeman Jones, her husband, citizens of the State of Virginia, residing at Petersburg, in said State; Lucia Beverly Bernard, a widow, a citizen of the State of Virginia, residing at Petersburg, in said State; Hugh S. Morrison, a citizen of the State of Virginia, residing at Richmond, in said State; Hackley Morrison and Elizabeth Madison Morrison, citizens of the State of Virginia, residing at Richmond, in said State, infants under the age of twenty-one years, who sue by their next friend, Hugh S. Morrison, a resident of the same city, and a citizen of the same State; Maria Hackley, widow of Robert J. Hackley, deceased, a citizen of the State of California, residing at San Francisco, in said State; Mary Hackley and Sallie Hackley, citizens of the State of California, residing at San Francisco, in said State, infants under the age of twenty-one years, who sue by Mary Hackley, their mother and next friend, also a resident of the same city, and a citizen of the same State; Mary F. Hackley, widow of Alexander S. Hackley, deceased, a citizen of the State of New York, residing at Brooklyn, in said State; Sallie Strachan Hackley, a citizen of the State of New York, residing at Brooklyn, in said State; Alexander S. Hackley, a citizen of the State of New York, residing at Brooklyn, in said State; Gertrude Hackley, Thomas H. Hackley and Stephen P. Hackley, citizens of the State of

3 New York, residing at Brooklyn in said State, infants under the age of twenty-one years, who sue by Mary F. Hackley, their duly qualified and acting guardian and next friend, who is also a citizen of the same State, and resident of the same city, bring this, their bill of complaint, against Lizzie W. Carew, a widow, a citizen of the State of Florida, residing at Tampa, in said State; W.

W. Hampton, a citizen of the State of Florida, residing at Gainesville, in the county of Alachua, in said State; E. R. Gunby and M. G. Gibbons, M. M. Nelson, E. C. Beach and S. Y. Finley and George W. Hall, all citizens of the State of Florida, residing at Tampa, in said State.

And thereupon your complainants complain and say that this suit is brought to determine the ownership of certain real property located in the county of Hillsboro, in the State of Florida, hereinafter particularly described; that the value of said property is more than the sum of five thousand dollars, and that the determination of the rights of the parties hereto in said property involves the construction of certain statutes of the United States, to-wit:

An act of Congress approved March 30th, one thousand eight hundred and twenty-two, entitled, "An act for the establishment of a territorial government of Florida" (3 Stats. 654); and the acts referred to therein, so far as the same may be applicable; An act approved April twenty-second, one thousand eight hundred and twenty-six, entitled "An act giving the right of pre-emption in the purchase of lands to certain settlers in the States of Alabama and Mississippi, and the Territory of Florida" (4 Stats. 154); and all acts referred to therein so far as the same may be applicable;

An act approved August eighteenth, one thousand eight hundred and fifty-six, relative to military reservations in the State of Florida, entitled, "An act making appropriation for certain civil expenses of the government for the year ending June thirtieth, one thousand eight hundred and fifty-seven."

An act approved July fifth, one thousand eight hundred and eighty four, entitled, "An act to provide for the disposal of abandoned and useless military reservations."

And your complainants further represent the following state of facts:

That heretofore, to-wit: in the year 1845, one Robert J. Hackley died intestate, leaving surviving him as his sole heirs at law, the following named children, to-wit:

I. Sallie Field Hackley, one of the complainants herein, who inter-married with one John Wychliffe Scott, and who survived him, a citizen of the State of Virginia, residing in Orange county in said State;

4 II. Eliza Madison Hackley, one of the complainants herein, who inter-married with one Edwin Scott, and who survived him, and who is now a citizen of the State of Virginia, residing in Powhatan county, in said State.

III. Lucia Beverly Hackley, who inter-married with one Morrison, who died before his said wife, who has since died, leaving surviving her as her sole heirs at law the following named children, to-wit:

1. Harriet B. Morrison, who inter-married with one Freeman Jones, and who with her husband are complainants herein, said State.

2. Lucia B. Morrison, who inter-married with D. M. Bernard, now dead, and thereby became Lucia B. Bernard, one of the complainants herein, a citizen of the State of Virginia, residing at Petersburg, in said State.

3. Hackley T. Morrison, who died intestate, leaving surviving him as his sole heirs at law the following children, to-wit:

(*a.*) Hugh S. Morrison, one of the complainants herein, a citizen of the State of Virginia, residing at Richmond, in said State.

(*b.*) Hackley Morrison, one of the complainants herein, a citizen of the State of Virginia, residing at Richmond, in said State, being an infant, sues by Hugh S. Morrison, his next friend, one of the complainants herein, also a citizen of said State, and resident of said city.

(*c.*) Elizabeth Madison Morrison, one of the complainants herein, a citizen of the State of Virginia, residing at Richmond, in said State, who, being an infant, sues by Hugh S. Morrison, one of the complainants herein, her next friend, also a citizen of said State and a resident of said city.

IV. Robert J. Hackley, who died intestate, leaving surviving him as his sole heirs at law, and distributees, Maria Hackley, his widow, one of the complainants herein, a citizen of the State of California, residing at San Francisco, in said State, and the following named children, to-wit:

(1.) Mary Hackley; and

(2.) Sallie Hackley, complainants herein, both of whom are citizens of the State of California, and reside at San Francisco, in said State, and being infants, sue by Maria Hackley, their mother and next friend, complainants herein she being also a citizen of the same State, and residing in the same city.

V. Alexander S. Hackley, who died intestate, leaving as his sole heirs at law, and distributees, Mary F. Hackley, his widow, one of the complainants herein, a citizen of the State of New York, residing at Brooklyn, in said State, and the following named children, to-wit:

(1.) Sallie Strachan Hackley;

(2.) Alexander S. Hackley;

(3.) Gertrude Hackley;

(4.) Thomas H. Hackley; and

(5.) Stephen P. Hackley, complainants herein, all of whom are citizens of the State of New York, residing at Brooklyn, in said State, the last three of whom are infants and sue by Mary E. Hackley, their duly qualified and acting guardian and next friend, complainants herein, she being also a citizen of said State, and a resident of said city.

And your complainants state that the foregoing are the sole descendants and heirs at law of the said Robert J. Hackney, deceased.

Your complainants further show that about the month of November, 1823, the said Robert J. Hackley, who was then over twenty-one years of age, and the head of a family, settled, inhabited and culti-

vated a certain tract of land, situated on the east side of Hillsboro river at its confluence with the eastern arm of Tampa bay, sometimes known as Hillsboro bay, in what was then the Territory, now the State, of Florida; that the tract of land so settled upon, inhabited and cultivated is the land now known as lots number 8, 9 and 10, section 24, township 29, south, range 18 east; lot number 16, section 18, and lots numbered 12, 13 and 14, section 19, township 29 south, range 19 east, in the State of Florida, in what is now Hillsboro county, containing about one hundred and forty-eight and 11/100 (148 11/100) acres; that the said Hackley took with him thereon his family, cattle, hogs, poultry and agricultural implements, and in good faith established his home thereon; that he erected on said lots 9 and 10 of said tract a substantial dwelling and other buildings; that at the time that said Hackley settled upon said land, it was a dense wilderness, far removed from civilization, his only companions being Indians, alligators, panthers and wolves; that said land was not rightfully claimed by *and* (any) other person on or before the 22nd day of April, 1826, that neither said Hackley nor any one claiming through him, has ever claimed any tract of land in said Territory or State of Florida, by virtue of a confirmation of any commissioners or by virtue of any act of Congress; that the said Hackley remained upon said land until he was dispossessed by the troops of the United States, as will be hereinafter set forth, and continued to reside in the Territory and State of Florida until his death in 1845.

6 Your complainants further show that in the month of February, in the year 1824, a detachment of United States troops sent to the southern portion of the Territory of Florida, under the command of Colonel George M. Brooke, in connection with certain Indian troubles then existing, located a camp or cantonment upon said tract of land which was then inhabited and cultivated by said Hackley, as aforesaid, and took possession of the house and land so occupied, inhabited and cultivated by said Hackley, as will more fully appear from copies of affidavits of James Gadsden, commissioner, etc.; J. B. Benjamin, George M. Brooke, Robert J. Hackley and Lorenzo Thomas, filed herewith, marked Exhibits "A," "B," "C," and "D," respectively, and prayed to be read as a part of this bill; that said troops continued to occupy said camp or cantonment until December 10th, 1830, when by an executive order of the President of the United States, the Fort Brooke military reservation was established, containing sixteen square miles of land, and embracing the above mentioned tract which had been settled and improved in 1823 and 1824 by said Robert J. Hackley, as aforesaid; that said reservation was from time to time reduced by executive orders until it embraced on June 1st, 1878, only the above described tract of land, containing 148 11/100 acres, commonly known as the "Reduced Fort Brooke military reservation," which reservation was relinquished and transferred by the Secretary of War to the Interior Department on January 4th, 1883, in accordance with the provisions

of the laws of the United States, as will be hereinafter more fully set forth.

Your complainants further show that on March 30th, 1822, the Congress of the United States passed an act entitled "An act for the establishment of a territorial government in Florida" (3 Stats. 654), by which it was provided that all public laws of the United States not repugnant to the provisions of said act, should extend to and have full force and effect in the said Territory; that subsequent thereto, to-wit: on March 3rd, 1823, Congress passed an act authorizing the President of the United States to establish a land office in each of the districts of East and West Florida as soon as in the opinion of the President there was a sufficient quantity of public lands surveyed in either of said districts to authorize the opening of one or both of said land offices (3 Stats. 750); that subsequent thereto, by act of Congress approved April 22nd, 1826 (4 Stats. 154), entitled "An act giving the right of pre-emption in the purchase of land to certain settlers in the State- of Alabama, Mississippi and Territory of Florida," it was provided:

7 "That every person, or the legal representative of any person, who being either the head of a family, or twenty-one years of age, did, on or before the first day of January, in the year one thousand eight hundred and twenty-five, actually inhabit and cultivate a tract of land situated in the Territory of Florida, which tract is not rightfully claimed by any other person, and who shall not have removed from said Territory, shall be entitled to the right of pre-emption in the purchase thereof, under the same terms, restrictions, conditions, provisions and regulations, in every respect as are directed by the act entitled "An act giving the right of pre-emption in the purchase of lands to certain settlers in the Illinois Territory, passed February 5th, one thousand eight hundred and thirteen; provided that no person shall be entitled to the provisions of this section who claimed any tract of land in said Territory by virtue of a confirmation of the commissioners, or by virtue of any act of Congress."

That the terms, restrictions, conditions, provisions and requirements of the act of February 5th, 1813, referred to in said act of April 22nd, 1826, are contained in section 2 of said act of February 5th, 1813, which reads as follows:

"That every person claiming a preference in becoming the purchaser of a tract of land in virtue of this act, shall make known his claim by delivering a notice in writing to the register of the land office for the district in which the land may lie, wherein he shall particularly designate the quarter section he claims, which notice the register shall file in his office on receiving twenty-five cents from the person delivering the same. And in every case where it shall appear to the satisfaction of the register and receiver of public moneys of the land office that any person who has delivered his notice of claim is entitled according to the provisions of this act to a preference in becoming the purchaser of a quarter section of land,

such person so entitled shall have a right to enter the same with the register of the land office on producing his receipt from the receiver of public moneys for at least one-twentieth part of the purchase money, as in the case of other public lands sold at private sale: provided that all lands to be sold under this act shall be entered with the register at least two weeks before the time of the commencement of the public sales in the district wherein the land lies; and every person having the right of preference in becoming the purchaser of a tract of land, who shall fail so to make his entry with the register within the time prescribed, his right shall be for-
8 feited, and the land by him claimed shall be offered at public sale with the other public lands in the district to which it belongs."

Your complainants allege that their decedent, the said Robert J. Hackley, having actually settled upon, inhabited and cultivated the tract of land in the Territory of Florida, hereinbefore mentioned, before the 1st of January, in the year 1825, as required by the provisions of the said act of April 22nd, 1826, and not having removed from said Territory, acquired by virtue of said act a vested right of pre-emption in the purchase of said land whenever the same should be open to entry, which said right could only be forfeited by the failure of the said Robert J. Hackley, or his legal representatives, to comply with the provisions and conditions of the act of February 5th, 1813.

Your complainants show that the said Robert J. Hackley and his representatives, your complainants, as aforesaid, have complied with all of the terms, restrictions, conditions, provisions and regulations of the said acts of April 22nd, 1826, and February 5th, 1813, so far as they are applicable to this case, and have used the greatest possible vigilance and the utmost care to protect and preserve their rights in said land, as will hereinafter more fully appear.

Your complainants show that the land office at St. Augustine, Florida, in which jurisdiction the land in controversy was located, was first established by an executive order in 1828, under authority of the act of March 3rd, 1823, aforesaid, that at the time of the establishment of said land office, and for a long time thereafter the hostility of the Indian tribes rendered communication between said land office and that portion of Florida wherein the said Hackley resided, practically impossible; that as soon as practicable after the establishment of said land office, to-wit: in the year 1835, although the said lands had not then been surveyed, the said Hackley filed with the register of said land office evidence designating the tract of land, which had been settled, inhabited and cultivated by him as aforesaid, among other things, the affidavits hereinbefore mentioned as Exhibits "A," "B," "C," and "D," and claimed the right of pre-emption in the purchase thereof, under and by virtue of said act of April 22nd, 1826; that subsequent thereto, by change of boundary lines of the land districts of Florida, the said land came within the jurisdiction of the local land office at Newnansville, Florida, where-

upon, on November 27th, 1843, the said Hackley secured from the register of the land office at St. Augustine, Florida, certified copy of the evidence formerly filed in the said land office in support
9 of his claim to the right of pre-emption in the purchase of said land, and filed the same, together with a notice of said claim, with the register of the land office at Newnansville, Florida, of which notice the following is a copy.

"TALLAHASSEE, *Nov.* 27, 1843.

"SIR: You will please take notice that I claim the right of pre-emption to the tract of land known as Cantonment Brooke, bay of Tampa, under the pre-emption act approved April 22, 1826, and that I have filed proof of the same in the register's office at St. Augustine.

"Very respectfully, your ob'd't serv't,

"R. J. HACKLEY.

"Register of the land office, at Newnansville, Fla."

That in the year 1845, the said Robert J. Hackley died at Tallahassee, Florida, having been a resident of said Territory and State continuously from the year 1823, the date of his settlement upon, inhabitation and cultivation of said land as aforesaid, to the date of his death; that from the death of said Hackley down to the present time, his legal representatives have continuously and persistently asserted their claim to the right of pre-emption in the purchase of said land, and have fully complied with all of the provisions and requirements of the laws of the United States with respect to the same.

And your complainants further show that, on September 26th, 1887, T. H. Randolph, the administrator of the estate of the said Robert J. Hackley, filed in the local land office at Gainesville, Florida, as such administrator, and on behalf of the legal representatives of said Hackley, a supplemental notice of the claim of the legal representatives of said Hackley to the right of pre-emption in the purchase of said land; that subsequent thereto, to-wit: on October 14th, 1887, said Randolph, administrator as aforesaid, executed before the register of the said land office at Gainesville, Florida, a further sworn statement reciting the claim of the legal representatives of the said Robert J. Hackley, to a right of pre-emption in the purchase of said land; that, on the same date, to-wit: October 14th, 1887, the said Randolph, administrator as aforesaid, filed in said land office his application to purchase said land on behalf of the legal representatives of said Robert J. Hackley, and tendered the purchase price therefor, in accordance with the laws of the United States; that said application and tender of the purchase price of said land were rejected and refused by the register and receiver of said land office, for reasons which will more fully appear by reference to cop-
10 ies of said sworn statement and said application, and the indorsements of the register and receiver thereon, filed herewith

marked Exhibits "E" and "F" and prayed to be read as a part of this bill of complaint.

Your complainants allege that they and their decedent, the said Robert J. Hackley, did make full compliance with all of the requirements of the laws of the United States with respect to their right of pre-emption in the purchase of said land, but that, disregarding the rights of your complainants, the officers of the Interior Department of the United States, while conceding that the said Robert J. Hackley did settle, inhabit and cultivate said land before January 1st, 1825, to-wit: in 1823 and 1824, as aforesaid, and that said Robert J. Hackley and his legal representatives did comply with all the requirements of the laws of the United States as aforesaid, yet held and decided as a matter of law that your complainants were not entitled to the right of pre-emption in the purchase of said land, for reasons which will hereinafter more fully appear.

Your complainants further show that, on January 4th, 1883, the said reduced Fort Brooke military reservation, which then embraced only the tract of land hereinbefore mentioned, was relinquished and transferred by the Secretary of War to the Interior Department; that, on March 16th, 1883, the General Land Office prepared and submitted to the local land office at Gainesville, Florida, a proof and diagram of the official survey of the said reduced Fort Brooke military reservation, which diagram was received at said local land office on the 22nd of March, 1883; that, on April 2nd, 1883, the Commissioner of the General Land Office telegraphed the register and receiver of the local land office at Gainesville, Florida, directing them to allow no entries upon any of the lands within the limits of said reservation; that, prior to the receipt of said telegram, certain persons hereinafter mentioned, had been allowed to enter and file for said lands, under the homestead and pre-emption laws, and certain other persons had applied to enter and file for said lands under said laws, which latter applications were rejected by said register and receiver, on account of prior entries and filings of record; that thereafter such proceedings were had that the Commissioner of the General Land Office acquired jurisdiction and on December 17th, 1883, said Commissioner considered the several applications for said land within the limits of said reservation, and rejected the same; that, on January 22nd, 1884, the Commissioner of the General Land Office held for cancellation homestead entry No. 11,637 of Edmund S. Carew, for lot No. 16, section 8; lots 12, 13 and 14, section 19, township 29,
11 south, range 19 east, and lots 8, 9, and 10, section 24, township 29 south, range 18 east, filed March 22nd, 1883; also pre-emption declaratory statement No. 564, filed by Clifford Herrick, on March 26th, 1883, for the land covered by said homestead entry, and the pre-emption filing No. 569 of Louis Bell, made March 30th, 1883, for the same land; that all the said parties duly appealed to the Secretary of the Interior, who, on March 16th, 1884, affirmed the decision of the Commissioner of the General Land Office; that, on April 30th, 1885, the acting Secretary of the Interior affirmed

the decision of the Commissioner of the General Land Office rendered June 13th, 1884, rejecting the application of Enoch B. Chamberlain to make homestead entry on lot No. 14 of the northwest quarter of the southwest quarter of section 19, township 29, south, range 19 east; that, on May 10th, 1887, the acting Secretary of the Interior considered the application of Daniel Mather to make pre-emption entry of lots 8, 9 and 10, section 24, township 29 south, range 18 east, lot 16, section 18, and lots 12, 13 and 14, section 19, township 29 south, range 19 east of said tract, under the act of Congress approved July 5th, 1884, and rendered a decision in which the pre-emption claim of said Daniel Mather was allowed; that, on May 17th, 1889, the Secretary of the Interior reconsidered his decision of May 10th, 1887, allowing the pre-emption claim of Daniel Mather, as aforesaid, and ordered that a hearing be had by the register and receiver of the local land office at Gainesville, Florida, to determine the rights of the various claimants to said land.

And your complainants show that such proceedings having been had that said register and receiver acquired jurisdiction, said hearing was duly had before them, at which the following claimants to said tracts of land were allowed to present their claims and to submit evidence in support thereof, namely: Daniel Mather, S. W. Carew, Andrew Stillings, Joel B. Myers, Richard Nash, G. W. Kirby, Frank C. Thomas, Henry W. Beach, John H. Havans, Julius Ceasar, Frank Jones, Mrs. E. S. Carew, Louis Bell, W. B. Henderson, Clifford Herrick, E. B. Chamberlain, Wirt C. Myers, Marion M. Nelson the heirs of Robert J. Hackley, deceased, and the mayor and city council of the city of Tampa; that, after considering the evidence submitted on behalf of each of the claimants, the register and receiver of said land office, on December 10th, 1889, rendered their joint decision rejecting the filings and entries and the claims of each and all of said claimants, as being speculative and otherwise illegal, except the claims of the heirs of Robert J. Hackley and Louis Bell; that
12 said register and receiver found "that Hackley made entry in good faith and for the purpose of securing a home," and decided that the claim of his legal representatives was superior to any other claim to said tract of land; but the said register and receiver declined to allow the legal representatives of said Robert J. Hackley to make entry upon said land for the reason that "since the date of the transfer by the Secretary of War of the reduced Fort Brooke military reservation to the Interior Department, no published notice has been given to the people that the land embraced within the reservation would be opened to pre-emption or homestead entry," as required by the act of July 5th, 1884.

Your complainants further show that appeals were duly taken by all of the said claimants from the decision of said register and receiver of the local land office to the Commissioner of the General Land Office, who having acquired jurisdiction, considered said appeals and rendered his decision thereon, on December 10th, 1890, by which said decision he expressly approved and adopted the find-

ing of facts made by said register and receiver, and upon the question of law, deciding that the claim of the legal representatives of said Hackley "is fully protected by the acts of 1826 and 1858, and the act of July 5, 1884;" that said Commissioner also held that sixty (60) days' publication was not required by law before said land could become subject to entry by the legal representatives of said Hackley, and rejected each and every claim of said tract of land and to each subdivision thereof, with the exception of the claim of legal representatives of said Robert J. Hackley who were allowed to perfect entry upon said land under section 2269 of the Revised Statutes of the United States; all of which will more fully appear from a copy of the opinion of said Commissioner filed herewith, marked "Exhibit G," and prayed to be read as a part of this complaint.

Your complainants further show that appeals were duly taken from said decision of the Commissioner of the General Land Office to the Secretary of the Interior by Daniel Mather, the City of Tampa, the heirs of Louis Bell, deceased, W. B. Henderson, Lizzie W. Carew, Julius Caesar, Frank Jones, E. B. Chamberlain and Martha Lewis, alias Martha Stillings; that, on November 25th, 1892, the Secretary of the Interior, having acquired jurisdiction, considered said appeals, and rendered his decision thereon; that in said decision the said Secretary of the Interior approved the findings of fact as made by the register and receiver and the Commissioner of the General Land Office as aforesaid, but held as a matter of law that the legal
13 representatives of the said Hackley had no valid claim to the said land under acts of 1807, 1813, 1822 and 1826, and that any claim the said Hackley may have had under the laws of the United States could not be asserted by his said legal representatives; all of which will more fully appear by reference to a copy of said decision of the Secretary of the Interior, filed herewith, marked "Exhibit H," and prayed to be read as a part of this complaint.

Your complainants further show that all the parties in interest, to-wit: Daniel Mather, the City of Tampa, the heirs of Louis Bell, deceased, W. B. Henderson, Julius Caesar, Frank Jones, E. B. Chamberlain, Martha Lewis, alias Martha Stillings, and the said heirs of Robert J. Hackley, deceased, filed before the Secretary of the Interior motions for a review and reconsideration of said decision; that the Secretary of the Interior having jurisdiction, reviewed and reconsidered said decision of November 25th, 1892, and rendered his decision upon such reconsideration and review on July 24th, 1894, by which latter decision the said Secretary of the Interior, while approving the findings of the facts, as originally made by the register and receiver and the Commissioner of the General Land Office insofar as the claim of the legal representatives of said Robert J. Hackley was concerned, again rejected the claim of said legal representatives of Robert J. Hackley, deceased, to the right of pre-emption in the purchase of said land, upon conclusions of law, which will more fully appear by reference to a copy of said decision of July 24th, 1894, filed herewith, marked "Exhibit J," and prayed to be read as

a part of this complaint; that the said Secretary of the Interior by his said decision of July 24th, 1894, awarded the right to enter upon said land embraced in said reduced Fort Brooke military reservation, to the following parties, all of whose claims arose subsequent to the 23rd day of March, 1883.

To the heirs of E. S. Carew, deceased: Lots 9 and 10, section 24, township 29, south, range 18 east, containing fifty-nine and 93/100 (59.93) acres.

To the heirs of Louis Bell, deceased: Lot 8, section 24, township 29, south range 18 east, containing sixteen and 73/100 (16.73) acres.

To Julius Caesar: Lot 13, section 19, township 29, south, range 19 east, containing twenty-two and 51/100 (22.51) acres.

To Martha Stillings (now Turner), widow and heir of Andrew Stillings, deceased: Lot 12, section 19, township 29, south, range 19 east, containing ten and 29/100 (10.29) acres.

To Frank Jones: Lot 16, section 18, township 29, south range 19 east, containing sixteen and 40/100 (16.40) acres.

14 To E. B. Chamberlain: Lot 14, section 19, township 29, south, range 19 east, containing twenty-two and 25/100 (22.25) acres.

That on September 9th, 1895, under authority of said decision of the Secretary of the Interior, rendered on July 24th, 1894, Lizzie W. Carew, claiming to be the widow of E. S. Carew, deceased, was permitted by the register and receiver of the land office at Gainesville, Florida, to make final commutation homestead entry No. 10,060, for the lands awarded to the heirs of said E. S. Carew, deceased, as aforesaid; that said entry was duly approved for patent by the Commissioner of the General Land Office, on July 29th, 1896, and that a patent thereon was duly issued by the United States to Edward S. Carew, on July 30th, 1896, for lots 9 and 10, section 24, township 29, south, range 18 east.

Your complainants further show that subsequent to the issuance of said patent to Edward S. Carew, for lots 9 and 10, section 24, township 29, south, range 18 east, as aforesaid, James W. Bilbie, and numerous other citizens of Hillsboro county, Florida, residents upon lands in said county, which were formerly a part of said Fort Brooke military reservation, filed in the Department of the Interior of the United States, a petition praying that a suit be instituted by the United States to set aside and annul the patents issued for the lands contained in said reduced Fort Brooke military reservation, for fraud in the procurement thereof, among which patents so sought to be set aside was the patent issued to said Edward S. Carew, as aforesaid, that after said petition had been pending for a long time before said Department the Secretary of the Interior finally rendered his decision thereon on the 8th day of March, 1898, declining to request the Department of Justice to institute proceedings to set aside said patents, for reasons which will more fully appear from a copy of said opinion filed herewith, marked "Exhibit K," and prayed to be read as a part of this complaint.

Your complainants further show that Edward S. Carew died intestate in the year 1886; that Lizzie W. Carew, one of the defendants herein, is the widow and the sole heir at law and distributee of said Edward S. Carew, deceased; that said Lizzie W. Carew as said heir at law and distributee of Edward S. Carew, acquired the legal title to all of said lots Nos. 9 and 10, section 24, township 29, south, range 18 east, under and by virtue of said patent issued by the United States Government to said Edward S. Carew for said lots on July 30th, 1896, as aforesaid.

15 That said Lizzie W. Carew, well knowing the rights of your complainants in the premises, and with intent to injure your complainants and to defeat their said rights, entered upon and took possession of said lots before the issuance of said patent to Edward S. Carew, as aforesaid, and that on October 4th, 1895, (many months before the issuance of said patent), said Lizzie W. Carew executed a pretended deed of conveyance to W. W. Hampton, one of the defendants herein (whom your complainants are informed and allege was counsel for Lizzie W. Carew in the prosecution of her claim to said land before the Interior Department), by which deed said Carew undertook to convey to said Hampton an undivided one-third interest in said lots 9 and 10, section 24, township 29, south, range 18 east, for a named consideration of one hundred dollars. Said deed being recorded in Hillsboro County, Record Book L. I. page 574.

That on May 20th, 1896 (several months before the issuance of said patent), said Lizzie W. Carew executed a pretended deed of conveyance to J. H. Williams and W. W. Williams (who your complainants are informed and allege are brothers of said Lizzie W. Carew), by which the said Lizzie W. Carew undertook to convey to said J. H. and W. W. Williams, an undivided two-thirds interest in said lots Nos. 9 and 10, section 24, township 29, south, range 18 east, for a named consideration of forty thousand ($40,000) dollars, said deed being recorded in Hillsboro County Record Book T. I., page 253.

That on June 1st, 1896, said W. W. Hampton executed his pretended deed of conveyance to said J. H. Williams and W. W. Williams (in which his wife joined), thereby undertaking to convey to said pretended grantees for a named consideration of one dollar, an undivided one-third interest in all of said lots 9 and 10, section 24, township 29 south, range 18 east, except the following described tract, to-wit: Beginning at the north east corner of Government lot No. 9, and running south 844.3 feet, thence west to low water mark of Hillsboro river; thence in a north westerly direction to an intersection with the north boundary line of said Government lot 9, thence in a north easterly direction along the north boundary line of said lot 9 to place of beginning, which said deed is recorded in Hillsboro County Record Book M. I., page 174.

That on June 4th, 1896, said J. H. Williams and W. W. Williams executed a pretended deed of conveyance (in which their wives joined) to said W. W. Hampton, by which the said Williams and

Williams undertook to convey to said Hampton an undivided two-thirds interest in all that portion of said lots 9 and 10, section
16 24, township 29, south, range 18 east, in which said Hampton, in his deed of June 1st, 1896, aforesaid, had undertaken to reserve an undivided one-third interest, being the following described tract: Beginning at the north east corner of Government lot 9, and running thence south 844.3 feet; thence west to low water mark on the Hillsboro river, thence in a north westerly direction to intersection with the north boundary line of said Government lot 9, thence in a north easterly direction along the north boundary line of said lot 9, to place of beginning containing 13.77 acres; reserving, however, the extension and continuation of Franklin street and Florida avenue, as they are now laid out in the city of Tampa, across the lands conveyed, said deed being recorded in Hillsboro County Record Book, T. I. page 405; the purpose of said pretended deeds from said Hampton to said J. H. Williams and W. W. Williams, and from said J. H. and W. W. Williams to said Hampton, being, as your complainants are advised and allege, to partition said lots between said parties.

That on June 4th, 1896, said J. H. Williams and W. W. Williams, executed their pretended deed of mortgage (in which their wives joined), by which they undertook to mortgage to the aforesaid Lizzie W. Carew to secure a pretended indebtedness of fifty thousand ($50,000) dollars, all of said lots 9 and 10, section 24, township 29 south, range 18 east, except the above described tract reserved in the above mentioned deed of June 1st, 1896, from W. W. Hampton to said J. H. Williams and W. W. Williams, and also excepting five acres in the southeast corner of Government lot No. 10, fronting 210 feet on Hillsboro bay, said deed of mortgage being recorded in Hillsboro County Record Book B. I., page 192. And your complainants are advised and allege that the five acres so reserved from said mortgage was the same land afterwards conveyed by said Williams and Williams to Nelson, Beach and Finley, defendants herein, as will be hereinafter more fully set forth.

That on June 4th, 1896, said J. H. Williams and W. W. Williams, executed their joint pretended deed of conveyance (in which their wives joined), by which they undertook to convey to M. M. Nelson, one of the defendants herein, for a named consideration of one dollar one and one-half acres of said Government lot 10, generally described as follows: Beginning at a point 423.41 feet south of the northeast corner of Government lot 10, running thence west 204.02 feet, thence north 320.26 feet, thence east 204.02 feet, thence south
17 320.26 feet to the point of beginning, the tract so undertaken to be conveyed, being a portion of that part of said Government lot 10 reserved from said mortgage from said J. H. and W. W. Williams to Lizzie W. Carew, as aforesaid; said deed being duly recorded in Hillsboro County Record Book U. I., page 240.

That on June 27th, 1896, said J. H. and W. W. Williams, executed their pretended deed of conveyance (in which their wives joined),

by which they undertook to convey to E. C. Beach, one of the defendants herein, for a named consideration of one dollar, two acres of said Government lot 10, generally described as follows: Beginning at northeast corner of Government lot 10, thence south 743.67 feet for a starting point, thence south 402.16 feet, thence along the shore of Hillsboro bay, in southwesterly direction, 210 feet, thence north 451.88 feet, thence east 204.02 feet to place of beginning; the tract so undertaken to be conveyed being a portion of that part of said lot 10 which was reserved from the mortgage executed by said J. H. and W. W. Williams to Lizzie W. Carew as aforesaid, said deed being recorded in Hillsboro County Record Book, M. I., page 242.

That on June 27th, 1896, said J. H. and W. W. Williams executed their pretended deed of conveyance (in which their wives joined), by which they undertook to convey to S. Y. Finley, one of the defendants herein for a named consideration of one dollar, one and one-half acres of Government lot 10, generally described as follows: Beginning at a point 743.67 feet south of northeast corner of Government lot 10, and running thence west 204.02 feet, thence north 320.26 feet, thence east 204.02 feet, thence south 320.26 feet to place of beginning; the tract so undertaken to be conveyed being the remainder (after the conveyance to Nelson and Beach aforesaid) of that part of said lot 10 which was reserved from the mortgage executed by said J. H. and W. W. Williams to Lizzie W. Carew, as is hereinbefore set forth, said deed being recorded in Hillsboro County Record Book, M. I., page 302.

That on March 7th, 1896, W. W. Hampton and wife, M. E. Hampton and wife and Lizzie W. Carew, executed their joint pretended deed of conveyance by which they undertook to convey to George W. Hall, one of the defendants herein, for a named consideration of five thousand dollars one and one-half acres more or less of said tract of land generally described as follows:

Begin at that part or portion of lot 9, sec. 24, T. 29 S. R. 18 E. in former Fort Brooke military reservation, bounded by lines
18 described as follows: Beginning on the northern boundary of said lot 9, which line is the south line of Whiting street of the city of Tampa at the point of intersection, produced by west line of Franklin street, city of Tampa, with said north boundary line (said point of beginning being also on a corner N. 63 degrees E. and distant three feet from east side of the trun-ion of a certain iron gun situate on said street and boundary line) and from said described beginning point, run S. 22 degrees east on the produced west line of Franklin street, 142.7 feet to N. E. corner of land hereby conveyed; thence deflecting 94 degrees 10 minutes to the right to a course S. 72 degrees 10 minutes W. and running thereon 134.4 feet to a corner, thence deflecting 18 degrees 16 minutes course S. 53 degrees 54 minutes west and running 76.7 feet to N. W. corner of a tract, thence deflecting left 73 degrees 12 minutes (course S. 21 degrees E.) and running 309 feet to S. W. corner of tract; thence deflecting left 100 degrees 30 minutes (course N. 58 degrees E.) and running thence

221.4 feet to S. E. corner of tract, thence deflect left 100 degrees (course N. 22 degrees W.) and run on west line of Franklin street 286 feet to N. E. corner of tract conveyed; said deed being duly recorded in Hillsborough County Record Book, T. I., page 481.

That on April 9th, 1897, said J. H. and W. W. Williams executed their pretended deed of conveyance (in which their wives joined) by which they undertook to convey to E. R. Gunby and M. G. Gibbons, defendants herein, (who, your complainants are informed and allege were attorneys and legal advisors of said Lizzie W. Carew) for a named consideration of one dollar, three acres of Government lot 10, generally described as follows: Beginning at the northeast corner of Government lot 10, and running thence west 204 feet to point of beginning of the land conveyed, thence south 311.1 feet to a corner, thence west 420 feet to a corner, thence north 311.1 feet to a corner and thence east 420 feet to a point of beginning, said deed being recorded in Hillsboro County Record Book "Z" 1, page 137.

That on May 7th, 1897, Lizzie W. Carew released the above described tract of land, conveyed by said J. H. and W. W. Williams to said E. R. Gunby, and M. G. Gibbons, as aforesaid, from the lien of the mortgage executed by said J. H. and W. W. Williams, to said Lizzie W. Carew on June 4th, 1896, as aforesaid, the named consideration for said release being the sum of one dollar, said release being recorded in Hillsborough County Record Book No. 4, page 1.

That on March 5th, 1900, J. H. and W. W. Williams exe-
19 cuted their quit claim deed (in which their wives joined) by which they undertook to reconvey to Lizzie W. Carew all their interest in and to Government lots 9 and 10 for a named consideration of one dollar, said deed being recorded in Hillsborough County Record Book L. 2, page 204.

Your complainants allege that the said Lizzie W. Carew one of the defendants herein claims title to all of said lots 9 and 10 section 24, T. 29 S. R. 18 E., (except the portions thereof conveyed to other defendants herein as aforesaid), as sole heir at law and distributee of said Edward S. Carew, patentee as aforesaid and under and by virtue of said pretended quit claim deed from J. H. Williams and W. W. Williams executed as aforesaid; that said W. W. Hampton one of the defendants herein claimed title to all that portion of said lots 9 and 10 described and reserved in his said pretended deed to J. H. and W. W. Williams, dated June 1st, 1896, aforesaid, under and by virtue of said pretended deed of May 20th, 1896, from said Lizzie W. Carew to said Hampton, and said pretended deed of June 4th, 1896, from said J. H. Williams and W. W. Williams to said Hampton; and said Hampton now claims title under and by virtue of said pretended conveyances to all of said tract except so much thereof as was undertaken to be conveyed to said George W. Hall as aforesaid; that said M. M. Nelson, E. C. Beach, S. Y. Finley and E. R. Gunby and M. G. Gibbons, defendants herein, claim title to those respective portions of said tract of land described in the respective pretended deeds of conveyance from said J. H. and W. W. Williams to said

Nelson, Beach, Finley and Gunby and Gibbons, hereinbefore mentioned; that said George W. Hall claims title under and by virtue of said pretended deed of March 7th, 1896, from W. W. Hampton and wife, M. E. Hampton and wife, and Lizzie W. Carew to said Hall, to that portion of said tract of land described in said deed; and that all of said claims of said defendants are in violation of the rights of your complainants.

And your complainants charge that said pretended conveyances from said Lizzie W. Carew and said J. H. and W. W. Williams to said W. W. Hampton; from said Lizzie W. Carew and said W. W. Hampton to said J. H. Williams and W. W. Williams, from said J. H. Williams and W. W. Williams to said M. M. Nelson and to said E. C. Beach, and to said S. Y. Finley, and to said E. R. Gunby and M. G. Gibbons, and from said W. W. Hampton and wife, M. E. Hampton and wife, Lizzie W. Carew to said George W. Hall, executed as aforesaid were made without real, legal, or valuable consideration, and that the same were conclusive and made for the purpose of injuring your complainants and defeating their rights in said land; and that all of the parties to said pretended conveyance, both grantors and grantees, were and have been at all times fully advised and had full knowledge of the illegal and invalid character of said pretended conveyances and of the rights of your complainants in the premises.

And your complainants charge that the said Lizzie W. Carew, W. W. Hampton, M. M. Nelson, E. C. Beach, S. Y. Finley, E. R. Gunby, M. G. Gibbons and George W. Hall, have with intent to injure and oppress your complainants, and to defeat the rights of your complainants in the premises, made and executed alleged and pretended conveyances purporting to convey certain portions of said lots Nos. 9 and 10, section 24, T. 29, S. R. 18 east, to divers persons as yet to your complainants unknown, but whose names your complainants pray when discovered they may have leave to insert herein as defendants and parties to this suit should they be advised that it is necessary or proper so to do, with proper and sufficient words to charge them with the premises; that all the parties to said alleged and pretended conveyances, both the alleged grantors and the alleged grantees, were and have been at all times fully advised and have had full knowledge of the rights and interests of your complainants in said tract of land.

Your complainants allege that they are now, and have been at all times ready and willing to pay the Government price of said lands, with all necessary and proper expenses which were required by law, in order to perfect their rights therein, and your complainants herewith tender and offer to pay to the defendants the Government price of said land, together with proper expenses and other charges, as may be adjudged by this honorable court to be right.

For as much as your complainants are the equitable owners of said land, and are without adequate relief except in a court of equity where such matters are properly cognizable, and to the end that the

defendants may make a full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of their knowledge, remembrance, information and belief, full, true and perfect answer make to the matters hereinbefore stated and charged, but not under oath, answer under oath being hereby expressly waived, your complainants pray:

That this honorable court will take jurisdiction of this suit and properly construe and interpret the acts of Congress hereinbefore mentioned, so far as the same may be applicable to this case.

21 That said defendants be decreed to hold the legal title of said land in trust for your complainants.

That proper decrees be entered requiring said defendants, upon payment by your complainants of the Government price of said land, and such further and reasonable charges as this court may find to be just and right, to convey said land to your complainants.

And that such further and general relief may be granted to your complainants as their case may require, and to equity may seem meet.

That a writ of subpœna of the United States of America may issue directed to said Lizzie W. Carew, W. W. Hampton, M. M. Nelson, E. C. Beach, S. Y. Finley, E. R. Gunby, M. G. Gibbons, and George W. Hall, commanding them on a day certain, to appear and answer to this bill of complaint, and to abide and perform such orders and decrees in the premises as to this honorable court shall seem proper and required by the principles of equity and good conscience.

FLEMING & FLEMING,
WM. H. LAMAR,
GEO. H. LAMAR,
MUMFORD & ANDERSON,
Complainant's Solicitors.

EXHIBIT A.

TERRITORY OF FLORIDA, }
County of Leon. }

Be it known that before me, Thomas M. Bradford, justice of the peace, in and for the county aforesaid, personally appeared James Gadsden, who being duly sworn on his oath deposeth, that some time in the latter part of the year 1823, or the early part of the year 1824, he was at the bay of Tampa and there witnessed a settlement made, as he was informed, by a Mr. Hackley, known as Mr. Robert Hackley, the applicant in this case. Mr. Rhodes was the resident, and acknowledged himself as the agent of the said Hackley, who had gone to Pensacola on some private business, and who the deponent understood did subsequently return to said settlement. The improvements made on the public land by said Hackley is the identical spot subsequently selected by Gen'l Geo. Brooke of the

U. S. Army, who, together with the deponent, was appointed by the Government of the U. S. for said purpose, as a site for the erection of a cantonment, known as Cantonment Brooke on the bay
22 of Tampa. Of the cultivation of the land near said improvement the deponent knoweth nothing.

(Signed) JAMES GADSDEN.

Sworn to and subscribed before me, this 27th day of August, 1834.

THOMAS M. BRADFORD, *J. P.*

EXHIBIT B.

TERRITORY OF FLORIDA, }
County of Hillsborough. }

Be it known that before me, Augustus Steele, judge of the county court of the county of Hillsborough, personally appeared Josiah B. Benjamin, and after being first duly sworn, on his oath saith, that in the year 1824 he knew Robert J. Hackley to reside upon and cultivate in his own right a certain tract of land, situate, lying and being on the east side of the Hillsborough river at its confluence with the eastern arm of Tampa bay, in Florida (then sometimes known as Hillsborough bay).

That the said Robert J. Hackley, did build on said tract of land, and on the place subsequently the site of the military garrison, known as Cantonment Brooke, a frame house of superior style and quality for a new country, which deponent understood the said Hackley imported from New York for the purpose of erecting and occupying on the said land, and that he had at the same period sundry implements of industry, together with hoes, spades, plough and also cows, oxen, poultry, hogs, etc., which he had brought with him for the purposes aforesaid.

Deponent further says, that the said Robert J. Hackley continued in the occupation of said place and cultivated said land, until some time in the month of March, in the year 1824, when he was compelled to leave his said possession and improvements by Colonel Brooke of the U. S. Army, who then established the garrison before mentioned on the tract of land then occupied by the said Hackley.

(Signed) J. B. BENJAMIN.

Sworn to and subscribed before me this 1st day of October, 1834.

(Signed) AUGUSTUS STEELE,
Judge of the County Court of the County Aforesaid.

TERRITORY OF FLORIDA, }
County of Hillsborough. }

AT CHAMBERS, TAMPA, *Oct.* 1*st*, 1834.

I Augustus Steele, judge of the county court aforesaid, do
23 hereby certify that I have interrogated Josiah B. Benjamin, the affiant above named, in relation to his knowledge of the residence on and cultivation by Robert J. Hackley of a certain tract of land mentioned in the foregoing affidavit, in the year 1824, what buildings he erected, what implements of husbandry he had with him, and in regard to such other matters as might elicit the truth on the subject, and am satisfied that the statements in the foregoing affidavit are true.

In testimony whereof I have hereunto set my hand the day and year above written.

(Signed) AUGUSTUS STEELE.

EXHIBIT C.

TERRITORY OF MICHIGAN, }
County of Brown. }

Be it known that before me, a justice of the peace, in and for the county aforesaid, personally appeared George M. Brooke, who first being duly sworn, deposeth and saith, that in the latter part of the year A. D. 1823, or the early part of the year A. D. 1824, he was appointed by the Government of the United States, in conjunction with Colonel James Gadsden, of the Territory of Florida, deputed to select a site for the erection of a cantonment in the vicinity of Tampa bay in the said Territory of Florida; that he made a selection of the site, known subsequently as Cantonment Brooke; that in his selection Colonel Gadsden acquiesced; that the place selected was at that time occupied by the applicant in this case, Mr. Robert J. Hackley, and that he had erected upon it a comfortable dwelling house, and had the ground near it in cultivation.

(Signed) GEORGE M. BROOKE,
Bvt. Brigd. Gen'l, U. S. A.

Sworn and subscribed to before me H. S. Baird, a justice of the peace, this 27th day of November, A. D. 1834.

(Signed) HENRY S. BAIRD,
Justice of the Peace, Brown County, M. T.

EXHIBIT D.

TERRITORY OF FLORIDA, }
County of Leon. }

Be it known that before me, Leslia A. Thompson, judge of the county court of the county aforesaid, this day personally appeared the
24 subscriber, Robert J. Hackley, who being first duly sworn, on his solemn oath saith, that some time in the year one thousand eight hundred and twenty-three, he made an improvement, resided upon and cultivated a tract of land situate, lying and being in vicinity of Tampa bay, Territory aforesaid, that said tract of land is the identical spot subsequently selected by Gen'l Geo. M. Brooke of the U. S. Army, who in conjunction with Col. James Gadsden, of this Territory, was appointed by the Government of the United States for that purpose, as the site of what has since been known as the military encampment called Cantonment Brooke.

(Signed) R. J. HACKLEY.

Subscribed and sworn to this 9th day of February, A. D. 1835, before me.

(Signed) L. A. THOMPSON,
Judge of the County Court of Leon County.

EXHIBIT D. D.

TERRITORY OF FLORIDA, }
Jefferson County. }

Personally appeared before me, Williard Budd, a justice of the peace, in and for the county aforesaid, Lorenzo Thomas, who being duly sworn, deposeth and saith, that some time in November or December, eighteen hundred and twenty-three, Robert J. Hackley, brought from the city of New York, a frame dwelling house, together with cattle, poultry and agricultural implements, that he errected said dwelling house on a tract of land in the vicinity of Tampa bay, the identical spot subsequently selected as a site for what has since been known as the military encampment, called Cantonment Brooke; that he was then about twenty-five years of age; that he was the head of a family consisting of about sixteen hired white men; that he resided together with said family in said *family in said* dwelling house; that he cultivated a portion of the above described land, and that there was no other person residing on, or cultivating said tract of land at said time.

(Signed) L. THOMAS.

Sworn to and subscribed before me, this fifth day of December, 1843.

W. BUDD,
Justice of the Peace, Jefferson County, Territory of Florida.

25 EXHIBIT E.

I, Thos. H. Randolph, claiming the right of pre-emption and purchase as administrator of the estate of the late Robert Hackley, deceased, for the benefit of his heirs, under section one, acts of April 22, 1826, February 5th, 1813 and July 5th, 1884, to lots 8, 9, and 10, section 24 township 29 S., range 18 E., lot 16, section 18, lots 12, 13 and 14, section 19, township 29 S., range 19 E., containing 148 11/100 acres, subject to sale at the land office at Gainesville, Fla., do solemnly swear to the best of my knowledge and belief, that the said Robert J. Hackley never exercised his pre-emption right, and was in every respect a qualified pre-emptor under the said acts; that he settled upon, cultivated and otherwise improved the said land, not to sell the same on speculation, but in good faith to appropriate it to his own exclusive use or benefit, and that I as his administrator, have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever, by which the title which I as administrator may acquire from the Government of the United States would inure in whole or in part to the benefit of any person, excepting myself as the administrator of his estate for the benefit of his heirs as aforesaid. And I hereby tender to the receiver of the land office at Gainesville, Fla., in lawful money of the United States, the Government price of said land, being at the rate of $1.25 per acre, together with the required Government fees.

(Signed) T. H. RANDOLPH, *Adm'r.*

EXHIBIT E, Cont'd.

I, S. C. Tucker, register of the land office at Gainesville, Fla., do certify that the above and foregoing affidavit was subscribed and sworn to before me on this 14th day of October, A. D. 1887.

(Signed) S. C. TUCKER, *Register.*

EXHIBIT F.

No. —. LAND OFFICE AT GAINESVILLE, FLA.,
October 14th, 1887.

I, Thomas H. Randolph, administrator of the estate of Robert J. Hackley, deceased, of Tallahassee, Leon county, Fla., do hereby apply to purchase the lots 8, 9, and 10, of sec. 24, tp. 29 S., of R. 18 E.;

lots 16 of sec. 18, and lots 12, 13, and 14, sec. 19, in tp. 29 S.,
26 of R. 19 E., consisting of 148.11 acres, according to the returns of the surveyor general, for which I have agreed with the register to give at the rate of one dollar and twenty-five cents per acre.

(Signed) T. H. RANDOLPH, *Adm'r.*

Indorsement on back of above application.

"Rejected, land applied for not subject to entry, being embraced in the Fort Brooke military reservation.

(Signed) S. C. TUCKER, *Register.*

October 14th, 1887.—Money tendered but refused for the reason that the application is rejected.

(Signed) JOHN T. CRAWFORD, *Receiver.*

EXHIBIT G.

DEPARTMENT OF THE INTERIOR, J. U. W.
GENERAL LAND OFFICE, E. C. S.
WASHINGTON, D. C., *December* 10, 1890. E. W. K.

Fort Brooke military reservation.

Register and receiver, Gainesville, Florida.

GENTLEMEN: I have before me for consideration the papers in the case of the Fort Brooke military reservation, transmitted by you on appeal form your decision of December 20, 1889.

The present case arose on a hearing ordered by letters "G," May 17th, and May 25, 1889. The record is voluminous, and it is noticed that several of the witnesses have omitted to sign their names to the testimony and that you omitted to affix the jurat thereto; the omissions, however, are not fatal, as all the material points in such testimony are repeated in other portions of the testimony.

The statement of the case, made by you in your decision, is as concise as it can well be made, and presents the facts brought out by the hearing so fully, that I have adopted the same and embody it as part of my decision.

You report that due notice was sent to Daniel Mather, S. W. Carew, Andrew Stillings, Joel B. Myers, Richard Nash, G. W. Kirby, Frank C. Thomas, Henry W. Beach, John S. Havens, Julius Cæsar,
27 Frank Jones, Mrs. E. S. Carew, Louis Bell, W. B. Henderson, Clifford Herrick, E. B. Chamberlain, Marion M. Nelson, Wirt S. Myers, heirs of R. J. Hackley, deceased, and the honorable mayor and city council of the city of Tampa, Florida.

On the day set for hearing all the parties named appeared by counsel and the investigation proceeded from day to day, until all

the parties in interest had concluded their testimony, and submitted their claims for final determination by the department.

"We deem it unnecessary to review at length the early history at Fort Brooke, from the fact that the question has been so long pending before the Interior Department and Congress that its history is generally known, and will therefore confine our report to the claims of the respective claimants and the evidence submitted in support of each.

"It is contended on behalf of the heirs of R. J. Hackley, deceased, that Hackley entered upon the land included in the Fort Brooke reservation in 1824, which was prior to the arrival of Col. Brooke and his command, six years previous to the order of General Jackson creating Fort Brooke as a military reservation; only five years from the date when the United States acquired title to the land by treaty with Spain, and 21 years previous to the admission of Florida into the Union as a State. It is claimed that this entry was made under the acts of Congress of 1813 and 1826, providing for the preemption of public lands, and that he continued in possession until the arrival of Col. Brooke and his command, when he was ordered off and compelled to abandon his home.

"The land selected by Col. Brooke as a military reservation was retained under the control of the U. S. Army until 1830, when General Jackson issued his order creating Ft. Brooke as a military reservation, and it appears from the *ex parte* statements on file that Mr. Hackley never relinquished or voluntarily abandoned his claim to the land. He at all times, up to the time of his death, contended that under the acts of 1813 and 1826 his prior right to purchase could not be questioned whenever the reservation became useless or abandoned by the military authorities. The letters on file in support of Mr. Hackley's claim show that Hackley moved to the Territory of Florida in 1824, when it was a dense wilderness, his only companions being the Indians, alligators, panthers and wolves, and that he dwelt upon the reservation for some time prior to the arrival of Col. Brooke. This seems to us to entitle his claim, or that of his heirs who shared with him the privations of a frontier life, to serious consideration, and believing that Hackley made entry in good faith,
and for the purpose of securing a home under the provisions
28 of the acts of 1813 and 1826, then in force we consider his
claim superior, in the absence of an adverse claim, to the claims made after the abandonment of the fort in 1883.

"It is our belief that the act of 1884 could not annul or destroy a right acquired over sixty years prior to the date of the passage of said act, and in as much as the widow and heirs of Hackley have continued to prosecute their claims for the right to purchase the abandoned reservation, we believe that their claim is entitled to serious consideration.

"Daniel Mather, with a man named A. Ross, went upon the reservation with no intention of making it their home, but by permission of the military authorities, for the purpose of carrying on the

business of bakers, and to supply the U. S. troops then on the reservation with bread. While the reservation was under the control of the Federal troops, Mather and Ross conducted the bakery business, supplying the troops and citizens of Tampa with bread, and not until the troops were removed from the reservation did Mather or Ross manifest any intention of making a permanent location upon the reservation.

"On April 14, 1883, Mather filed a declaratory statement for lot 16, sec. 18, and lots 12, 13 and 14, sec. 19, T. 29 S. R. 18 E., and for two years continued to reside upon the land, conducting the bakery business. He made but little improvements to the old Government building which, it is alleged, he purchased and made but little, if any, attempt to cultivate any portion of the land.

"It is clear from the evidence that Mather's declaratory statement was made in the joint interest of himself and Ross, and that Ross, who was the moneyed member of the firm, furnished the capital and was to share in the profits of the investment. We are clear in the opinion that Mather's declaratory statement was filed as a mere speculation in the joint interest of himself and Ross without intent on the part of either to locate permanently as a pre-emptor or homesteader on the land. In 1885 Mather and Ross abandoned the reservation and have since made their homes in Tampa.

"Edmon S. Carew, now deceased, made homestead entry No. 11,627 on March 22, 1883, for lot 16, sec. 18, and lots 12, 13 and 14, sec. 19, T. 29 S. R. 18 E., which entry was canceled May 24, 1884, as per your letter "G" of that date. It is clear from the evidence and papers on file that Carew, in making the entry, acted under the directions contained in a telegram sent him by Hon. Wilkinson Call, U. S. Senator, in which the Senator instructed Carew to draw on him for the entry fees.

29 "It appears from draft on file, marked Exhibit "K," and of which the following is a copy.

"$20. GAINESVILLE, FLA., *March* 22, 1883.

"Pay to the order of H. F. Dutton & Co. twenty dollars, value received, and charge the same to account of

E. S. CAREW.

To. Hon. Wilkinson Call, Nat'l Hotel, Washington, D. C.

that Carew on the same day that he made his homestead entry, made a draft upon Senator Call to pay the fees and commission required.

"On April 13, 1883, Carew removed from Gainesville and entered upon the land, taking possession of the abandoned barracks building, which it is alleged he purchased from W. B. Henderson, while the evidence shows that the building had been purchased and was owned at the time of Carew's entry upon the land by S. A. Jones, of Tampa.

"It is clear from the testimony of Leslie and others that Carew, in making the entry, was acting as the agent of Hon. W. Call, and as appears from the letters of Senator Call addressed to Hon. T. Leslie in the supposed interest of the people of Tampa. On reaching Tampa, however, Carew, believing that he had a fortune at his command, refused to recognize any arrangement offered him by the representatives of Senator Call and made known his intention to hold on to the entry and establish his homestead right. The burden of proof tends to show that it was the intention of Senator Call, in sending the telegram to Carew, that the latter should enter the land for the benefit and use of the city of Tampa, and not for his individual benefit. At the time of entry it is clearly evident that Carew was acting under the advice contained in the telegram, as he appeared at the land office in Gainesville on the arrival of the northern mail, and in five minutes after the receipt by the register of your letter of March 17, 1883, transmitting for the files of the office the approved diagram of the subdivision of the late Ft. Brooke reservation into lots, in sections 18 and 19, T. 29 S. R. 19 E., and section 24 T. 29, S. R. 18 E., relinquished by the Secretary of War to the Interior Department, Mr. Carew had completed his homestead filing.

"It is clear therefore, that Mr. Carew's filing was not made by him with intent, at the time, to make the land his homestead, and that he did not entertain any such intent until he entered upon the land in April, 1883, and discovered its real value. The evidence shows that there must have been some understanding between Carew and Leslie and others that a portion of the land homestead should be donated to the city of Tampa for a park, as requested by Senator Call, the remainder to be owned jointly by those on whom Senator Call had relied to act with him in the interest of the city of Tampa.

"Mr. Carew, however, went back on the agreement, holding that by reason of his homestead entry he was the individual owner of the land, and he therefore refused to make any concession or to comply with the request of Senator Call in regard to a park for Tampa.

"We are clear in the opinion that Carew did not make his homestead entry in good faith and with intent as required by law; that his only incentive in holding on to his claim was the opportunity for speculation; and that the same motive and incentive has controlled his widow in remaining upon the land since the death of her husband. To constitute a *bona fide* settler upon the public lands, the entryman must intend making the land homestead his or her permanent home; the entry must not be made for the purpose of speculation, neither can there be conniving with others to secure the land for purpose of joint or individual speculation.

"The evidence relating to the claim of Lewis Bell shows that he had resided on the reservation by permission of the military authorities, and that he had been faithful as a soldier for many years

and had now the esteem and confidence of the officers in charge of the post. In all the arrangements sought to be entered into by the city of Tampa, Mr. Leslie and others, in regard to the disposition of the reservation, the claim of Mr. Bell and his family to that portion of the land which he occupied and for which he filed declaratory statement March 30, 1883, never seems to have been questioned, owing to his military service, good character and the high esteem in which he was held by the officers and soldiers stationed at the fort and by the citizens of Tampa.

"We believe that the claim- of his wife and children are entitled to more consideration from the Government than any of the other claims filed in this case.

"In 1889 the legislature of the State of Florida granted to the two towns, then known as Tampa and North Tampa, a charter uniting them under one corporate head, to-wit: the city of Tampa. By the same act the corporate limits of Tampa were extended so as to include the Fort Brooke reservation. Under this amended charter the mayor and council claim that the city of Tampa is entitled to receive from the Government as a donation this reservation for the purpose of a park and for such other uses as the authorities of said city may deem necessary.

31 "It will be seen that the two towns that now comprise the city of Tampa were distinct corporations, whose corporate limits extended to the limits of Fort Brooke, but did not include any portion of the reduced reservation. By the legislative act of 1889 the two towns were merged in one, and the limits of the new corporation extended so as to include the whole of the reduced reservation.

It must be borne in mind that there is another incorporated town, known as Ft. Brooke, which adjoins the reservation. This town has a mayor, council and marshal, and is vested with equal corporate rights with the city of Tampa. It must be observed that on January 1st, 1883, *that* at the time of the passage of the act of Congress of July 5, 1884, the corporate limits of the town of Tampa, and North Tampa ran along the line of the Ft. Brooke reservation, and that the reservation lay contiguous to, but was not within, the corporate limits of the towns named, until 1889 when the two towns were merged in one and the new corporation extended so as to include the reservation.

The allegation that any considerable portion of the reduced Ft. Brooke reservation was used for trade or business is not sustained by the evidence.

It appears that a bakery and curiosity shop were conducted there, and that a small space was used for logging and lumber purposes, but that it was a place where trade or business to any considerable extent was, or is now carried on, is not supported by the testimony.

William B. Henderson made application November 27, 1883, to file Gerard scrip upon the lands embraced within the reduced Ft. Brooke reservation, which application was rejected by this office.

It is not clear that Gerard scrip can be located upon other than public lands already subject to entry and of the minimum value of $1.25 per acre.

We do not consider it necessary to review in detail the evidence adduced in support of the claims of Frank Jones, who filed declaratory statement April 5, 1883; Andrew Stillings, deceased, who filed declaratory statement April 25, 1883, Julius Cæsar, who made homestead entry September 22, 1887; Marian M. Nelson, who filed homestead application July 27, 1887; Wirt S. Myers, who filed declaratory statement September 8, 1887; Clifford Herrick, who filed declaratory statement March 26, 1883; Enoch B. Chamberlain, who made homestead application April 22, 1884; John S. Havens, who filed affidavit of settlement July 10, 1889; and George Kirby, who made pre-emption filing from the fact that it would be merely a
32 repetition of what has already been stated with reference to the other claims referred to at length.

"We purpose, briefly, to invite your attention to the several acts of Congress upon which action has heretofore been based.

"The act of August 18, 1856, provided that all public lands heretofore reserved for military purposes in the State of Florida, which lands, in the opinion of the Secretary of War, are no longer useful or desired for such purposes, or so much thereof as said Secretary may designate, shall be, and are hereby placed under the control of the General Land Office to be disposed of and sold in the same manner, and under the same regulations as other public lands of the U. S. Provided, that said land shall not be so placed under the control of the General Land Office, until the said opinion of the Secretary of War, giving his consent, communicated to the Secretary of the Interior, in writing, shall be filed and recorded.

This 6th section of the act of June 12, 1858, repealing all existing laws relative to the sale of military sites, contains the following proviso: That the provisions of the act of August 18, 1856, relative to certain reservations in the State of Florida, shall continue in force.

By sections 2257, 2258 and 2389, R. S. U. S., it is shown that Government reservations are not subject to pre-emption or homestead entry, they being regarded as a distinct class of the public domains after their relinquishment. After the passage of the act of June 12, 1858, Congress assumed to direct the disposition of relinquishment or useless reservations, and in some cases the appraisal and sale was under congressional direction.

It is claimed by the attorney for Julius Cæsar and other claimants, that the act of July 5, 1884, is conclusive and absolute in its terms, and that those who had entered upon the reservation prior to said July 5, 1884, are entitled to make homestead entry. This claim we do not consider valid, from the fact that the law requires certain formalities to be carried out before reserved lands are made subject to entry. By the act of July 5, 1884, it is provided that the lands shall be surveyed, subdivided, and each tract thereof to be appraised

by three competent and disinterested men appointed for that purpose by the Secretary of the Interior. The said act of July 5, 1884, contained a proviso to the effect that any settler who was in actual occupation of any portion of any such reservation, prior to the location of such reservations, or who settled thereon prior to January 1, 1884, in good faith, for the purpose of securing a home and
33 of entering the same under the general laws, and has continued in such occupation to the present time, and is by law entitled to make a homestead entry, shall be entitled to enter the land so occupied, it being further provided that said lands were subject to entry under the public land laws at the time of their withdrawal.

It is clear from the records of the local land office, that one at least of the essential requirements of the act of 1884 has not been complied with. Since the date of the transfer by the Secretary of War of the reduced Fort Brooke reservation to the Interior Department no published notice has been given to the people that the land embraced within the reservation would be open to pre-emption or homestead entry.

And believing that the provisions of said act, requiring 60 days' publication before the land becomes subject to private entry is mandatory and cannot be annulled, except by Congress, we consider that the land now retains the same status that it did on the date of its transfer from the War Department to the Interior Department; that it is not yet, and cannot be, until after due publication, made the subject of pre-emption or homestead entry, and that those who were upon the reservation prior to or on the 1st day of January, 1884, were there as squatters, having no legal claim or right to any portion of the land, the same not being subject to pre-emption or homestead entry until all the requirements of the law had been complied with and the land within the reservation duly declared open to disposition under the land laws.

We are not disposed to deny our sympathy for many of the poor men and women who, to better their condition, made entry upon the reservation and built humble homes in which they have dwelt for years in anticipation of being able to secure title to the land upon which they had squatted, but sympathy is subordinate to duty—sentiments must yield to the stern requirements of the law, and in the duty devolving upon us we have sought to act with equity towards all, enmity towards none.

"We therefore recommend that all claims now pending either contest, pre-emption or homestead, excepting the claims of the heirs of R. J. Hackley and Louis Bell, be canceled, and that such relief as may appear best in the judgment and within the authority of the department, be granted in the two excepted cases just above named."

The status of this tract was partially determined in the decision

of the department in the case of Daniel Mather, 5 L. D., 632,
34 wherein it was held that this land was subject to disposal under the act of July 5th, 1884, and that the rights of settlers thereon prior to January 1, 1884, are protected.

In the Mather case no adverse interest was brought to light, the sole question being his right to make entry, and the department then held that Mather is entitled to offer proof, and if in all respects qualified, may make entry, "provided there is no objection other than those discussed herein." The case before me, however, shows other objections of such a character as to preclude Mather from making entry. His alleged settlement on the land was entirely with the consent of the military authorities, and was such as to identify him with the cantonment. His subsequent removal from the tract to Tampa was an abandonment of all right he may have had by reason of his being on the land at the date of abandonment of the reservation. But more than this, there were rights that had attached far earlier than any that Mather might have claimed. Hackley and Bell had been there years before Mather, but Bell's settlement and residence was, like that of Mather, with the consent of the military authorities, and he was in no position to lay claim to any portion of the diminished reservation until the abandonment by the military.

Hackley's settlement antedates all other claims, antedates the selection of a site for a cantonment, antedates the reservation. He appears, in fact, to be the first white man who ever lived on this land. He unquestionably is fully protected by the act of 1826, that of 1858 and that of July 5, 1884. He meets the requirements of the first proviso of the second section of the latter act.

Is there a valid adverse claim to this land of record, such as would operate to nullify Hackley's right by reason of his having no filing of record? I think not; all the filings that had been allowed by your predecessors in office upon the filing of the sub-divisional survey of the reduced reservation were canceled by letter "G" of July 22, 1884, which decision was affirmed by the department May 16, 1884. (See 2 L. D., 605; 11 C. L. O., 90.) Mather's application to file was rejected under these decisions.

So that as far as the record is concerned all these parties are on equal footing, and as Hackley's rights antedate those of all other settlers, they are paramount before this office. The only question that still remains to be determined is the one that you raise in regard to public notice before allowance of entry.

My construction of the second section of the act of June 5, 1884,
35 is that in the event of the survey, appraisal and public sale of a military reservation, such notice is required to be given; this would be the usual course in the case of a reservation of large area, but the proviso to that section allows a settler who was in actual occupation of any section of such reservation who has the necessary qualifications to enter not exceeding 160 acres under the general laws; for this purpose no notice is necessary, and as I

am of the opinion that Hackley's heirs are entitled under the proviso to enter the entire reservation of 148.11 acres, I see no necessity for the appraisal or notice referred to in the early part of the section.

This view seems to be confirmed by the opinion of the Hon. Secretary of the Interior, in the Daniel Mather case above cited.

That the land is now within the incorporated limits of Tampa does not affect the rights of settlers acquired before the incorporation, nor does the fact that at different times business of different kinds was conducted on the tract, subsequent to the settlement of Hackley and without his consent.

I have therefore rejected all the claims to this tract and to each legal sub-division thereof, with the exception of that of the heirs of Hackley, who will, if this decision becomes final, be allowed to make entry under section 2269, Rev. Stat. U. S.

So advised the parties, allowing the usual time for appeal.

I have, in this connection, also to advise you that there is pending in this office, and now under consideration, an application made by John B. Hamilton, supervising surgeon-general of the marine hospital service, for the setting aside and reserving of a tract, described by metes and bounds and containing an area of five acres, for the purposes and uses of the United States marine hospital service.

This application has not yet been acted upon, but in the event that such a reservation is set apart and established, the rights of all the parties discussed in this decision, whatever they may be found to be, must and will be held thereto.

Respectfully,

WM. STONE,
Ass't Commissioner.

36 EXHIBIT H.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *November* 25, 1892.

L. & R. Div., vol. 15–1040.

Ft. Brooke military reservation, Florida.

DANIEL MATHER ET AL.
vs.
THE HEIRS OF R. J. HACKLEY, DECEASED.

The Commissioner of the General Land Office.

SIR: I have considered the case, in which Daniel Mather, the City of Tampa, the heirs of Louis Bell, deceased, also W. B. Henderson, Lizzie W. Carew, Julius Cæsar, Frank Jones, E. B. Chamberlain and Martha Lewis, alias Martha Stillings, are the appellants, and The Heirs of Robert J. Hackley, Deceased, are the appellees, upon the several appeals by the former from your decision dated December

10, 1880, rejecting their claims for land within what is known as the Fort Brooke military reservation, in the State of Florida, and allowing the heirs of Robert J. Hackley, deceased, to perfect their claim to the land.

The status of said reservation has been frequently considered by this department, and a brief reference to its history may not be inappropriate.

As early as November 5, 1823, the War Department issued an order to Colonel George M. Brooke, of the United States Army, to proceed to the then Territory of Florida, and, in conjunction with James Gadsden, of said Territory, to select a site for a cantonment or garrison of the United States troops in that vicinity. Pursuant to said order, a site was selected for a garrison at a point on the east side of the Hillsborough river, at its junction with the eastern arm of Tampa bay, and some time in March, 1824, the United States took possession, and used the site so selected as a military post.

On December 10, 1830, said site was formerly (formally) reserved by executive order, in which its limits were fixed at sixteen miles square.

On January 21, 1845, General Worth recommended the reduction of said reservation to "four miles square," which recommendation was concurred in by General Scott, on February 18, and approved by the Secretary of War, on February 19, 1845.

On September 14, 1846, Major Whiting, commanding the
37 post at Fort Brooke, acknowledged the receipt of a letter transmitting "an extract of the report of Major-General Scott and the order of the Secretary of War, relative to a reduction of the reservation at Tampa bay," and reported that he had decided under said instructions to reduce the reservation to the following limits, namely:

From the point where the poles on the north side of the "enclosed ground" strikes the east bank of Hillsborough river, running in a line with said poles to or near the first angle, thence in a more northerly direction, say seventeen hundred yards, more or less, to embrace the spring from which the whole garrison is supplied with water (good water can be obtained at a nearer point in the village of Tampa), thence to the most convenient point on the bay, east of the "enclosed grounds," thence by the shore of the bay and river to the point of departure.

This report was not submitted to the Secretary of War until March 22, 1848, when it was approved by him on the same day, and transmitted to the President, who approved the same on March 24, 1848.

By the act of Congress, approved July 25, 1848 (9 Stat., 726), there was confirmed and granted to the county commissioners of the county of Hillsborough a location of one hundred and sixty acres "for the county site of said county at Tampa, viz: Beginning on the east bank of Hillsborough river, at the point where the reduced

military reservation, as made by Major L. Whiting, September 14, 1846, strikes the same," etc.

On July 24, 1860, the Secretary of War advised the Secretary of the Interior, as follows:

SIR: Referring to the correspondence between the two departments on the subject, I have the honor to enclose to you a report of the Quartermaster General, showing that Fort Brooke is now in readiness to be turned over to the Department of the Interior, in pursuance of the arrangements made to that effect.

On November 27, 1860, the Commissioner of the General Land Office returned to the Secretary of the Interior the letter of Senator Yulee, enclosing a proposition of one James M. McKay to rent said reservation, with the statement that he did not propose "at present" to recommend its sale, and saw no objection to its being rented to Mr. McKay, at a fair rental.

On December 3, 1860, the Secretary of the Interior consented to the occupancy of said tract by said McKay, upon his filing an agreement to take proper care of the buildings and grounds, and deliver the same on demand in as good condition as he received
38 them, without cost to the United States, and for the faithful performance of said agreement was to give bond in the sum of $1,000.

In January, 1861, McKay executed the agreement, gave the bond required, and took formal possession of said land. The recital and condition of said bond are:

That whereas, the said James McKay has received of and from the said Commissioner of the General Land Office, the possession, custody and control of the enclosed grounds of Fort Brooke, situate in the county and State aforesaid, with the appurtenances thereunto belonging, as shown by an agreement of even date herewith, now, if the said James McKay shall well and truly perform all and every part of said agreement in manner and form as he has agreed to do, then the foregoing obligation to be null and void, otherwise to remain in full force and virtue.

The agreement, as above stated, bound the said McKay, his heirs, executors, and administrators, to take good and proper care of the buildings, fences, grounds, and other improvements, in and upon said premises, and to return them to the said Commissioner of the General Land Office or his successors in office, in *and* (an) as good condition as they are when I receive them, without any costs or charge to the United States, whatever, ordinary wear and tear expected.

From 1861 to 1864 the reservation was held by the Confederate authorities when it was retaken by the United States, and occupied for a few days, and was again occupied in May, 1865, for a month, and again occupied by the United States in July, 1865, and garrisoned continuously until August 16th, 1869, when the troops were withdrawn, but the custody of the reservation was with the War

Department until February 16th, 1874. (See letter of Secretary of War, dated March 16th, 1874.)

On April 6, 1870, the Secretary of War, in reply to a letter addressed to him by the Commissioner of the General Land Office, dated March 26, same year, "relative to the public lands occupied by this (his) department for military purposes, at Fort Brooke, Florida," advised the Secretary of the Interior "that there is no longer any objection to their disposition by the General Land Office under the laws governing the subject. The necessary orders have been given for the disposition of the movable public property at the post."

Afterwards, on August 31, 1870, the Adjutant General of the Army addressed a communication to the Commissioner of the General Land Office, saying:

39 Referring to your communication of April 9, 1870, I am directed by the Secretary of War to request that you will suspend for the time being any further action upon the letter of April 6, 1870, from the War Department relinquishing the Fort Brooke military reservation in the State of Florida, it appearing from recent reports from the board of engineer fortifications that the reservation will be required for military purposes, in view of which measures are being taken to have it surveyed and lawfully declared and set apart by the executive.

In reply to said communication, Commissioner Wilson, on September 2, 1870, advised the War Department:

That on the 9th April, last, the register and receiver of the U. S. land office, at Tallahassee, Florida, were informed of the above relinquishment (April 6, 1870), but directed to allow no entries of land within the reservation until further advised by this office. These officers, as also the surveyors general have this day been furnished copies of your letter, and instructed to allow no entires until further directed.

(See Record Surv. Div., vol. 2, 401–402.)

On January 22, 1877, the War Department requested the President to set apart by executive order, in accordance with the accompanying plat, three tracts, as follows:

I. Tract marked A, B, C, containing 127,417 acres.

II. Tract marked "*m*, *m*, *l*, *k*," containing ten acres.

III. Right of way between tracts I and II, marked B, *n*, K, P.

Upon said request, the President, the same day, made the following indorsement:

The within request is approved, and the reservation is made accordingly. The Secretary of the Interior will cause the same to be noted in the General Land Office.

This order was transmitted by the Secretary of the Interior to the General Land Office on January 25th, same year. Afterwards, on May 29, 1878, the Secretary of War again requested "that a military reservation at the post of Fort Brooke, Tampa,

Florida, with boundaries as hereinafter described, may be duly declared and set apart by the Executive." A plat of the reservation, with field notes, was transmitted, showing its area to be 155½ acres. On the same day, the President made the following indorsement:

The within is approved, and the reservation is made and proclaimed accordingly. The Secretary of the Interior will cause the same to be noted in the General Land Office.

On June 11, 1878, the boundaries of said reservation were announced in General Orders No. 5.

On January 4, 1883, said reservation was relinquished and transferred by the Secretary of War to the Interior Department, and, on March 8th, following, the Secretary of the Interior was advised that "the services of the quartermaster's agent, now in charge of the reservation, will be continued until the 15th, instant, at which date he will be discharged."

On March 16, 1883, you transmitted to the local officers, at Gainesville, Florida, "an approved diagram of the subdivision" into seven lots, containing in all 148.11 acres, in sections 18 and 19, T. 29 S. R. 19 E., and section 24, T. 29, S. R. 18 E., which was received at said office on the 22nd day of the same month.

On April 2nd, following, you sent a telegram to the local offices directing them to allow no entries upon any land within said reservation. Prior to the receipt of said telegram, certain parties were allowed to enter and file for land under the homestead and pre-emption laws, and certain other persons applied to enter and file for said land, which applications were rejected by the local officers, on account of the prior entry and filings of record.

On December 17, 1883, you considered the several applications for land within the limits of said diagram, and rejected the same and held that the land was not subject to settlement and entry under the homestead and pre-emption laws, but must be disposed of under the provisions of the several acts of Congress, approved August 3, 1846 (9 Stat., 51, R. S. U. S., 2455), August 18, 1856 (11 Stat., 87), and July 2, 1864 (13 Stat., 374, R. S. U. S., 2364).

On January 22, 1884, you held for cancelation Edmond S. Carew's homestead entry No. 11,637, of lot 16, sec. 18, lots 12, 13 and 14, sec. 19, T. 29, S. R. 19 E., and lots 8, 9 and 10, sec. 24, T. 29, S. R. 18 E., filed March 22, 1883, also the pre-emption declaratory statement No. 564, filed by Clifford Herrick, on March 26, 1883, for the lands covered by said homestead entry, alleging settlement thereon March 21, 1883; and the pre-emption filing No. 569, of Louis Bell, made March 30, 1883, for the same lands upon which he alleged settlement March 25, 1883, covering said reservation.

On May 16, 1884, Mr. Secretary Teller considered the several appeals filed from your decisions, and held that said act of 1856 and section 2364 of the U. S. Revised Statutes must be construed together, and they prescribe the manner of the disposition of military reservations in Florida; that claimants must take notice of the law upon the subject, and that said entry and filings having been prematurely

made, your said decision holding the same for cancelation was correct and must be affirmed (2 L. D., 603–610).

41 On May 21, 1885, Acting Secretary Muldrow reaffirmed said decisions, and called your attention to the provisions of section 2 of the act of July 5, 1884 (25 Stat., 103), relative to the rights of actual settlers upon said reservation. On April 30, 1885, Acting Secretary Muldrow affirmed your decision of June 13, 1884, rejecting the application — Enoch B. Chamberlain to make homestead entry of lot 14, or the N. W. ¼ of the S. W. ¼ of sec. 19, T. 29, S. R. 19 E., for the reason that at the date thereof the land was covered by homestead entry of Carew.

Afterwards, on May 10, 1887 (5 L. D., 632), Acting Secretary Muldrow considered the application of Daniel Mather to make preemption entry of lots 8, 9 and 10, of sec. 24, T. 29, S. R. 18 E., lot 16, sec. 18, and lots 12, 13 and 14, of sec. 19, T. 29, S. R. 19 E., Gainesville, Florida, under said act of July 5, 1884, upon his appeal from the action of the local officers, rejecting the same, because he had "no claim of record upon which proof can be made covering the land in question," and held that in the absence of an adverse claim, failure to file a declaratory statement will not prejudice the right of the settler to make final proof and payment; and that said act of July 5, 1884, governs the disposal of all lands in abandoned military reservations, not otherwise disposed of, and protects the rights of settlers prior to January 1, 1884, duly qualified to make homestead entry; that said Mather, if his allegations be true, is "entitled to offer proof, and if in all respects qualified, may make entry, provided there is no objection other than those discussed herein."

On May 17, 1889, you were advised that on June 4, 1887, Honorable Wilkinson Call, a United States Senator from Florida, filed in the department a request that said case of Daniel Mather be reconsidered, for the reason that a person in the casual occupation of a house and lot upon a military reservation while the same was under the control of the military authorities could acquire no rights as a homestead settler, and also because a bill had been reported upon favorably by the Committee on Public Lands at the "49th session," to donate said reservation to the town of Tampa; that pending the consideration of said motion, the chairman of the Senate Committee on Public Lands referred to the department, for its views thereon Senate bill No. 2712, "To donate to the town of Tampa, in Florida, the Fort Brooke military reservation for the benefit of the free schools and other purposes."

Attention was called to the report of Mr. Secretary Vilas upon said bill, dated May 10th, 1888, relative to the status of said
42 reservation, as to whether the same was, as alleged, within the limits of the city of Tampa, and you were informed that:

In view of this information that has been acquired by the department since the rendering of the decision in the case of Daniel

Mather, and of the conflicting claim of the widow of Edward S. Carew, I have thought proper to direct that a hearing be ordered in the case of Mather, for the purpose of determining whether said land is included within the limits of an incorporated town, or occupied for the purposes of trade and business, and to determine the character of Mather's settlement, and whether it was simply as an occupant by permission of the military authorities, and to this end I return all the papers before the department in the case of Mather and also in the case of Lizzie W. Carew.

The hearing was duly had, and on December 20, 1889, the local officers rendered their joint opinion upon the evidence submitted by the respective parties.

In their opinion the local officers state that due notice was sent to Daniel Mather, S. W. Carew, Andrew Stillings, Joel B. Myers, Richard Nash, G. W. Kirby, Frank C. Thomas, Henry W. Beach, John S. Havens, Julius Caesar, Louis Bell, W. B. Henderson, Clifford Herrick, E. B. Chamberlain, Marion M. Nelson, Wert S. Myers and the heirs of R. J. Hackley, deceased, also the mayor and city council of Tampa, Florida; and that all of the said parties appeared by counsel and submitted their evidence in support of their respective claims.

The local officers first considered the claim of the heirs of said Hackley, and found that said R. J. Hackley entered upon the land claimed by his heirs included in said reservation in 1824, under the provisions of the acts of Congress approved February 5, 1813 (2 Stat., 797), and April 22, 1826 (4 Stat., 154); that said Hackley never relinquished his claim to said land; that "Hackley made entry in good faith and for the purposes of securing a home" under said acts of 1813 and 1826, and that his claim is superior, in the absence of any adverse claim, to the claims made after the abandonment of said reservation in 1883.

The local officers further find that said Mather went on said reservation with a man by the name of Ross, with no intention of making the land his home, that "Mather's declaratory statement was filed as a mere speculation in the joint interest of himself and Ross, without intent on the part of either to locate permanently as a pre-emptor or homesteader on the land;" and that in 1885, Mather and Ross abandoned said reservation and have since lived in Tampa.

43 With reference to the claim of Mrs. Carew, the local officers report that her husband, Edmund S. Carew, made his said entry on March 22nd, 1883, which was canceled as above set forth; that in making said entry Carew was acting as the agent of Senator Call, who furnished the money to pay the fees and commissions in making said entry, and intended that the entry should be for the benefit and use of the city — Tampa; that said Carew did not make said entry in good faith for a home, but under an understanding that a part of the land should be donated to the city of Tampa, for a park, and the rest to be held jointly with other parties who were in-

terested in advancing the interests of said city; that said entry was not made in good faith for the purpose of making the land his permanent home.

The claim of Louis Bell is found to be based upon his settlement made with the permission of the military, but on account of his good character, the local officers find that "the claim of his wife and children are entitled to more consideration from the Government than any of the other claims filed in this case."

The claim of the city of Tampa is based upon the facts that in 1889 the State of Florida, by legislative enactment, merged the towns of Tampa and North Tampa into one corporation, under the name of the city of Tampa, and extended the limits of the city so as to include said reservation, and it is claimed that the city is entitled to said reservation for a public park, and such other uses as may be deemed necessary.

The local officers find that the incorporated town of Fort Brooke, having a mayor and council, adjoins said reservation, and has equal corporate rights with the city of Tampa, that on January 1, 1883, and also on July 5, 1884, the towns of Tampa and North Tampa did not include said reservation, but *was* contiguous thereto, and only included said reservation under said act of incorporation of 1889; testimony fails to show that any considerable portion of said reduced reservation was used and occupied for trade and business.

With reference to the application of William B. Henderson, dated Nov. 27, 1883, to locate Gerard scrip upon the lands included within said reservation, the local officers say: "It is not clear that Gerard scrip can be located upon other than public lands already subject to entry, and of the minimum value of one dollar and twenty-five cents per acre." The local officers did not consider it necessary to review in detail the evidence relative to the other claims filed for lands within said reservation because "it would be merely a
44 repetition of what has already been stated with reference to the other claims referred to at length."

The local officers, after commenting upon said acts of Congress, relative to the disposition of lands in military reservations in Florida, find that the status of said reservation is the same as when it was relinquished to this department in 1883; that until the necessary steps are taken it cannot be disposed of under the act of July 5, 1884, and that "those who were upon the reservation prior to or on the 1st day of January, 1884, were there as squatters, having no legal claim or right to any portion of the land." They further "recommend that all claims now pending, either contest, pre-emption, or homestead, excepting the claims of the heirs of R. J. Hackley and Louis Bell, be canceled, and that such relief as may appear best in the judgment and within the authority of the department be granted in the two excepted cases just above named."

On December 10, 1890, you considered the several appeals filed from the decision of the local officers, which you quote and make a

part of your own. You state that the Mather case partially determines the status of said reservation, and that he was entitled to offer his proofs, and, if qualified, make entry, "provided that there is no objection other than those discussed herein;" that the evidence shows that Mather settled upon said land with the permission of the military authorities, which was sufficient to identify him with the cantonment, and his subsequent removal to Tampa was an abandonment of any right he might have had by reason of being on the land at the date of the abandonment of the reservation; that in addition, other rights had attached long prior to Mather's claim; that Hackley's settlement, which was prior to the selection of said reservation, was also prior to all other claims, and is fully protected by the provisions of said acts of 1826, 1858 and July 5, 1884; that under the second section of said act of 1884, if a survey and appraisal be made, and a public sale ordered, the notice thereof must be given, but where, under the proviso of said section, a settler is entitled to enter the whole reservation, there is no necessity for appraisal or notice, and the fact "that the land is now within the incorporated limits of Tampa does not affect the rights of settlers, acquired before the incorporation, nor does the fact that at different times business of different kinds was conducted on the tract and without his consent."

You accordingly rejected all the claims on this tract, except that of the heirs of Hackley, who were allowed in case your decision became final to make entry under section 2269, U. S. R. S., sub-
45 ject, however, to an application made by the supervising surgeon general of the marine hospital service that there be set apart a certain described tract containing five acres for the use of the United States marine hospital service, which has not yet been considered by you.

Elaborate briefs have been filed by the appellants, and besides, the questions at issue were discussed in an oral argument had on September 5 and 6, 1892.

I do not deem it necessary to set out in detail the grounds of error alleged in the several appeals. It is urged on the part of those claiming adversely to the heirs of said Hackley that his said settlement was illegal in its inception and not protected under the said act of July 5, 1884.

If Hackley's claim to the land be sustained, the others must necessarily fail. The facts relative to his settlement do not appear to be disputed. He went upon said land in 1823 and 1824, prior to the selection thereof for a military site for Col. Brooke, and was removed therefrom by the military forces in possession of the reservation in March, 1824; that in 1835 he filed in the local office at St. Augustine, Florida, proof in support of his claim, and afterward, on November 27, 1843, he filed in the Newnansville land office, same State, a notice that he claimed "the right of pre-emption to the tract of land known as Cantonment Brooke, bay of Tampa, under the pre-emption act approved April 22 1826;" that in 1845 said Hackley

died at Tallahassee, in said State, where he had continued to reside after being removed from said land. On October 14, 1887, the administrator of the estate of said Hackley applied to purchase said lands, which application was rejected because the land applied for is embraced in said reservation. Upon a subsequent hearing, the local officers found that Hackley had the prior claim, and you awarded all the land in said reservation to his heirs.

Let us first inquire what rights Hackley acquired under said act of 1826. The first section of the said act provided:

That every person, or the legal representatives of any person, who, being either the head of a family, or twenty-one years of age, did on or before the first day of January, in the year one thousand eight hundred and twenty-five, actually inhabit and cultivate a tract of land situated in the Territory of Florida, which tract is not rightfully claimed by any other person, and who shall not have removed from the said Territory shall be entitled to the right of pre-emption in the purchase thereof, under the same terms, restrictions, conditions, provisions and regulations in every respect, as are directed by the act entitled "An act giving the right of pre-emption, in
46 the purchase of lands, to certain settlers in the Illinois Territory, passed February the fifth, one thousand eight hundred and thirteen (2 Stat. 797).

By section two of said act of 1813, persons claiming a preference right of entry were required to file with the proper local land officers a notice particularly describing the quarter section which he claims, and any person entitled to a preference right of purchase, who shall fail to make entry of the land claimed by him at least two weeks before the commencement of the public sales, shall forfeit his right, and the land claimed by him shall be offered at public sale with the other public lands in the district to which it belongs. Besides, by the law in force at the date of Hackley's said settlement, persons were not allowed to settle upon any of the lands of the United States, except as tenants at will, under contract to be entered into with the local land officers. See act of Congress approved March 3, 1807 (Stat. 445), act of March 30, 1822, sec. 9 (3 Stat. 654). There can hardly be serious question, I think, that when the officers of the Government selected the site of said reservation, Hackley had no right thereto. His settlement was clearly illegal, and by the express terms of said act of 1826 said reservation, being rightfully claimed as a reservation, was excepted from its provisions.

In the case of Frisbie *vs.* Whitney (9th Wallace, 187), the Supreme Court held that occupation and improvement on the public lands with a view of pre-emption, confer no vested right in the land so occupied; that such vested right is only obtained under the pre-emption laws, where the purchase money has been paid and the receipt of the proper land officer given to the purchaser, and that until this is done, Congress may legally withdraw the land from entry or sale, though this may defeat the imperfect right of the settler. In the opinion of the court, p. 196 and 197, it is said:

The argument is urged with much zeal that because complainant did all that was in the power of any one to do towards perfecting his claim, he should not be held responsible for what could not be done. To this we reply, as we did in the case of Rector *vs.* Ashley (6 Wallace, 142), that the rights of the claimant are to be measured by the acts of Congress, and not by what he may or may not be able to do, and if a sound construction of these acts shows that he had acquired no vested interest in the land, then, as his rights are created by the statutes, they must be governed by their provisions, whether they be hard or lenient.

This ruling was reaffirmed by the Supreme Court in the Yosemite Valley case (9th Wallace, 77), and in Shepley *vs.* Cowan (91 U. S., 330–337).

47 In the case of Atherton *vs.* Fowler (96 U. S., pp. 513–517), Mr. Justice Miller said:

In the earliest stages of our land system no right or interest could be secured by the individual in any public land until it had been surveyed into legal subdivision. Nor after this had been done was it subject to sale until, by a proclamation of the President, it was brought into market. It often occurred that emigration, in advance of the readiness of the public lands for these sales had caused hundreds and thousands to settle on them; and when they came to be sold at public auction, their value, enhanced by the houses, fences, and other improvements of the settler, placed them beyond his reach and they fell into the hands of heartless speculators. To remedy this state of things the pre-emption system was established. This at first was only applicable to lands which had been surveyed. But gradually this was changed, until, in 1862, pre-emptors were allowed, on unsurveyed lands as well as those surveyed. Act of June 2, 1862, 12 Stat. 418.

The Government has never offered said reservation for sale. On the contrary, the War Department legally acting, presumably by direction of the President, took possession of said land and continued in possession thereof until it was relinquished to this department for disposal under the laws then existing.

But there is another reason why the claim of Hackley's heirs must be rejected. As we have seen, he had no vested right to said land in his lifetime, because his settlement was illegal in its inception, and, at the date of his death, he had no interest in said land which could descend to his heirs. In the case of Buxton *vs.* Traver (130 U. S. 232), the United States Supreme Court decided that a settler upon public lands, in advance of the public surveys, acquires no estate which he can devise by will, or which, in case of his death intestate, will fall to his heirs, at law, until, within a specified time after the surveys and the return of the township plat, he files a declaratory statement such as is required when the surveys have preceded settlement, and performs the other acts prescribed by law.

On page 237 of the opinion, the court says:

Section 2269 of the Revised Statutes, upon which the plaintiffs rely, has no application to the case presented by them.

That section was taken from section 2 of the act of March 3, 1843, 5 Stat. 620, to authorize the investigation of alleged frauds under the pre-emption laws, and for other purposes. At that time no settlement on unsurveyed lands was permitted by the laws of the United States, and the second section was intended to secure to the
48 heirs of the deceased pre-emptor a claim to the benefit of the pre-emption laws, which he had initiated, but not completed before his death, by filing in due time all the papers essential to the establishment of the same. His executor or administrator, or one of his heirs was in that event allowed to file such papers. No claim of the deceased in this case was lost by any failure to file the necessary papers. The time for any papers to be filed did not arrive during his life.

Any claim for injury on account of the removal of Hackley from said reservation in 1824 can be recognized only by the legislative branch of the Government, for it is clear that the heirs have no claim for said land which can be recognized by this department.

Having arrived at the conclusion that Hackley's heirs have no claim for said land, it will be proper to inquire into the legality of the other claims for said land.

The effect of the filing of said diagram in the local land office on March 22, 1883, was duly adjudicated in said departmental decision of Secretary Teller (*supra*) affirming your action in holding for cancellation the entry of Carew and the declaratory statements of Herrick and Bell, and holding that the land cannot be disposed of until ordered into the market under the provisions of sections 2364 and 2455, R. S. U. S.

No further action was taken by the department looking to the final disposition of said lands, and Congress, on July 5th, 1884, passed said act relative to the disposition of abandoned military reservations. The first section provides for the transfer of abandoned military reservations to the Interior Department whenever they have, in the opinion of the President, become useless. Section two of the same act declares "That the Secretary of the Interior may, if in his opinion the public interests so require, cause the said lands, or any part thereof, in such reservation, to be legally surveyed, or to be subdivided into tracts of less than forty acres each, and into town lots, or both." Said section two further provides for the appraisement of "each tract thereof" by a commission of "three competent and disinterested men," and the sale of said lots to the highest bidder for cash at not less than the appraised value thereof, nor less than one dollar and twenty-five cents per acre, after due publication of notice of said sale, with a proviso:

That any settler who was in actual occupation of any portion of any such reservation prior to the location of such reservation, or settled thereon prior to January first, eighteen hundred and eighty-

four, in good faith for the purpose of securing a home and of
49 entering the same under the general laws, and has continued in such occupation to the present time, and is, by law, entitled to make a homestead entry, shall be entitled to enter the land so occupied, not exceeding one hundred and sixty acres in a body, according to the Government surveys and subdivisions; provided further, that said lands were subject to entry under the public land laws at the time of their withdrawal.

By section three of the act provision is made for the appraisement and sale at public auction of the improvements, buildings, building materials and other property "upon any such lands, subdivisions or lots not hereafter sold by the United States authorities, with a proviso:

That where buildings or improvements have been heretofore sold by the United States authorities, the land upon which such buildings or improvements are situate, not exceeding the smallest subdivision or lot provided for by this act, upon the reservation on which said buildings or improvements are situate, shall be offered for sale to the purchaser of said improvements and buildings at the appraised value of the lands, and if said purchaser shall fail for sixty days after notice to complete said purchase of lands, the same shall be sold under the provisions of this act.

The finding of the local officers and your office, that the entry of Carew and the settlement of Mather were not made in good faith, is supported by the evidence, and their claims were properly rejected. Nor will the occupation of the land while withdrawn by Louis Bell, with the permission of the military, constitute him a settler within the purview of said act of 1884. The application to locate Gerard scrip was rightly rejected, for the land at that time was segregated by said entry of Carew, and the local officers had been directed not to allow any entries or filings on said reservation.

It is clear that none of said claimants is entitled to enter any of the lands claimed by them under the provisions of said act of 1884, for the obvious reason that under the said second proviso the lands were not "subject to entry under the public land laws at the time of their withdrawal," and the Secretary of the Interior has not proceeded to execute the provisions of said act.

The reservation was not brought into market in 1860, but was rented by the department to said McKay, for the reason that the Commissioner of the General Land Office did not propose, "at present," to recommend its sale.

No notice has ever been given that the reservation was subject to settlement and entry under the general land laws of the
50 United States. Besides, when said executive orders of 1877 and 1878 were made, the action of the department, relative to the disposition of said reservation, was suspended, and the local officers at Tallahassee were specially directed, on April 9, 1870, "to allow no entries until further directed." This order was never revoked prior to the issuance of said executive orders, the price of the

land was never fixed as required by said act of 1864, and the department expressly decided that, prior to 1883, the land in said reservation was not subject to entry and settlement, and that said filings and entry "were premature." It was also said that "the 148.11 acres that only remain of this reservation," may rightly be regarded as an "isolated or disconnected" tract under section 2455, before recited, which might properly be ordered by you "into market after due notice," and exposed to sale. By reason of its long reservation and the settlement of the surrounding country, and the building of a town near by the tract in question has become valuable, and these numerous claimants and all others ought to have an equal opportunity of purchase," citing Public Domain, 249, and 3 Ops., 274. The doctrine is also announced in Eldred *vs.* Sexton, 19 Wall. 189.

It is manifest, therefore, that the lands in said reservation were not subject to entry under the public land laws at the time of their withdrawal, and, hence, said claimants can not claim protection under said act of 1884.

Under the law as it now stands, said reservation will be disposed of, whenever "the Secretary of the Interior is of the opinion the public interests so require," under the provisions of said act of 1884.

Your judgment awarding said lands to the heirs of said Hackley is reversed, but affirmed in so far as it rejects the other claims to the land in controversy, and action looking to the disposal of said land will be deferred until you are further advised by this department.

The papers transmitted by your letter "G," dated September 28, 1891, are herewith returned.

Very respectfully, JOHN W. NOBLE, *Secretary.*

L. & R. letter press, vol. 256, p. 304.

51 EXHIBIT "J."

DEPARTMENT OF THE INTERIOR, E. W.
WASHINGTON, *July* 24, 1894.

MATHER ET AL.
vs.
THE HACKLEY HEIRS.

Involving Fort Brooke military reservation, Gainesville land district, Florida.

The Commissioner of the General Land Office.

SIR: The various parties at interest, to-wit: Daniel Mather, the City of Tampa, the Heirs of Louis Bell, Deceased, W. B. Henderson, Lizzie W. Carew, Julius Cæsar, Frank Jones, E. B. Chamberlain, Martha Lewis, alias Martha Stillings, and the Hackley Heirs, have,

by their attorneys, filed motions for review of departmental decision in the case of Mather, *et al.*, *vs.* The Hackley Heirs (15 L. D., 487).

Louis Bell filed declaratory statement on March 30, 1883, and died on the reservation in November, 1885.

Daniel Mather offered to file declaratory statement April 14th, 1883.

Frank Jones applied to file declaratory statement on April 5th, 1883.

Edward S. Carew made homestead entry on March 22, 1883, covering the whole of the reservation. Mrs. Carew, his widow, subsequently limited her claim to lots 9 and 10, sec. 24, T. 29, S. R. 18 E., amounting to 35.70 acres.

Julius Cæsar applied to file declaratory statement on the 23rd of April, 1883.

Enoch B. Chamberlain made homestead application on April 22nd, 1884.

Andrew Stillings, husband of Martha Stillings, applied to file declaratory statement on April 25th, 1883.

W. B. Henderson applied on the 27th, day of November, 1883, to locate lot No. 8 and lot No. 9, sec. 24, T. 29, S. R. 18 E., containing 36.87 acres, in satisfaction of Wm. Gerard's special certificate No. 2, subdivision No. 11, issued under the act of Congress approved on the 10th of February, 1855, for the relief of the heirs of Joseph Gerard.

The claim of the Hackley heirs is based upon the provisions of the act of April 22, 1826 (4 Stat., 154), as will be hereinafter explained.

A number of these motions for review were filed too late,
52 but, in the exercise of that supervisory power vested in the Secretary of the Interior all of the cases will be considered upon their merits.

The decision under review deals with the legal status of the Fort Brooke military reservation of Florida, which, during its existence embraced the land in controversy.

Said claims are therein held subject to disposition in accordance with the provisions of the act of July 5th, 1884 (23 Stat., 103), the first section of which provides as follows:

That, whenever in the opinion of the President of the United States, the lands, or any portion of them included within the limits of any military reservation heretofore, or hereafter declared, have become or shall become useless for military purposes, he shall cause the same or so much thereof as he may designate, to be placed under the control of the Secretary of the Interior for disposition as hereinafter provided, and shall cause to be filed with the Secretary of the Interior a notice thereof.

It will be noticed that by the terms of the act itself, as viewed in the light of the ordinary rules of construction, it is limited in its application to military reservations that were in existence at the date of its passage, or that should be thereafter created.

The President therein is empowered to place under the control of the Secretary of the Interior, such lands as "have become, or shall become useless for military purposes."

But the land formerly embodied in the Fort Brooke military reservation had been on January 4th, 1883, relinquished and transferred by the Secretary of War to the Interior Department and thus restored to the public domain before the passage of said act; therefore, there can be no reason why the President should consider their value for military purposes, in the sense contemplated by said act.

The scheme contemplated by the statute was the restoration of useless reservations. At that time the land in controversy did not belong to any reservation. I am of the opinion, therefore, that the act of 1884 has no application in the disposition of the lands belonging to said reservation.

The first section of the act of April 22, 1826, *supra*, upon the provisions of which the Hackley heirs base their claim, provides:

That every person, or the legal representatives of any persons, who, being either the head of a family, or twenty-one years of age, did, on or before the first day of January, in the year one
53 thousand eight hundred and twenty-five, actually inhabit and cultivate a tract of land situated in the Territory of Florida, which tract is not rightfully claimed by any other person, and who shall not have removed from the said Territory, shall be entitled to the right of pre-emption in the purchase thereof, under the same terms, restrictions, conditions, provisions and regulations, in every respect, as are directed by the act, entitled "An act giving the right of pre-emption, in the purchase of lands, to certain settlers, in the Illinois Territory," passed February 5th, one thousand eight hundred and thirteen; provided, that no person shall be entitled to the provisions of this section, who claims any tract of land in said Territory, by virtue of a confirmation of the commissioners, or by virtue of any act of Congress.

It appears that R. J. Hackley entered upon the land claimed by his heirs, included in said reservation, in 1823, and that said Hackley never relinquished his claim to said land, and that he made settlement in good faith, so far as the record discloses, and for the purpose of securing a home, which claim, his heirs contend, is superior to any that were made subsequent to the abandonment of said reservation.

It further appears that, in March, 1824, in obedience to instructions from the War Department, that portion of said reservation now in controversy was occupied by United States troops in cantonment, and was so used until December, 1830, when it was formally reserved by executive order in which its limits were fixed at sixteen miles square. Subsequent to this, said lands were in a state of reservation the greater portion of the time, until January 4th, 1883, when they were relinquished and finally restored to the public domain.

R. J. Hackley was ejected from the land by the military in 1824.

At that time, the provisions of the act of March 3, 1807 (2 Stat., 445), were in force in the State of Florida, having been re-enacted in the act providing for the establishment of a territorial government in said State on March 30th, 1822 (3 Stat., 654). The first section of the act of March 3rd, 1807, *supra*, provided:

That if any person or persons shall, after the passing of this act, take possession of, or make a settlement on any lands ceded or secured to the United States, by any treaty made with a foreign nation, or by a cession from any State to the United States, which lands shall not have been previously sold, ceded, or leased by the United States,
or the claim to which lands, by such person or persons, shall
54 not have been previously recognized and confirmed by the
United States; or if any person or person- shall cause such lands to be thus occupied, taken possession of, or settled; or shall survey, or attempt to survey, or cause to be surveyed, any such lands; or designate any boundaries thereon, by marking trees, or otherwise, until thereto duly authorized by law; such offender or offenders shall forfeit all his or their right, title, and claim if he hath, or they have, of whatsoever nature or kind the same shall or may be, to the lands aforesaid, which he or they shall have taken possession of, or settled, or cause to be occupied, taken possession of, or settled, or which he or they shall have surveyed, or attempt to survey, or cause to be surveyed, or the boundaries thereof he or they shall have designated or cause to be designated, by marking trees or otherwise.

When R. J. Hackley was ejected from said land by the military, in 1824, he could not, in view of the provisions of the act above quoted, have *iniated* (initiated) any claim to said lands by virtue of his settlement.

The heirs of Hackley, however, relying upon the provisions of the above quoted act of 1826, contend that the cantonment which existed from 1824 to 1830 was not such a reservation as will defeat the pre-emption rights of said heirs, under the act of 1826. His position is, that

When the act of 1826 confirmed in all settlers upon those lands prior to January 1, 1825, the right to purchase the lands whereon they resided, etc., no mere occupancy by the military, nor even constructive reservation of an inferior order or dignity, could defeat the operation of such an act of Congress.

In support of his position, counsel cites the case of Johnson *vs.* The United States, 2nd, Court of Claims, 391. Johnson's claim was based upon what is known as the "Oregon donation act," and, as required by that act, he had settled upon and occupied the land in controversy for four years continuously, with nothing left to be done to secure patent but to make proof of the same, when the tract was forcibly taken and occupied by troops of the United States, "without the knowledge of the President, the Secretary of War, or any high officer of the Government." In that case, the court held that

such an occupation was not a reservation within the meaning of the Oregon donation act, and could not affect the rights of the plaintiff.

In the case at bar, however, the facts are very different.

The tract now known as the Fort Brooke military reservation was occupied under the direction of the Secretary of War
55 two years before the passage of the act upon which the claim of the Hackley heirs is predicated.

In further support of his views, counsel recites the history of Camp Stambaug in Wyoming Territory.

It appears that, in 1870, the Secretary of War established said military post, which was laid off as a reservation and included all the territory within one mile of the flagstaff erected at the post. In 1881, the Secretary of War notified the Secretary of the Interior that said post, being no longer needed for military purposes, had been discontinued. In said communication, he expressed the opinion that, inasmuch as there had been no formal reservation of the lands included therein by the President, the same might be restored to the public domain, as other lands, without the consent of Congress.

The Secretary of the Interior concurred in this opinion, and said lands were treated as having been restored to the public domain by the act of abandonment, and the subsequent notification on the part of the Secretary of War.

I am unable to see wherein the correspondence above referred to sustains the contention of counsel, for while it may be true that a military post, established by the Secretary of War, may be restored to the public domain with less formality than if it had been reserved by a formal order of the President, still, the Secretary of War had authority to establish Cantonment Brooke, and by virtue of such establishment, the lands upon which it was located were not subject to entry so long as unrelinquished.

Where a military post or cantonment is established upon the public domain, whether the same be for temporary purposes, or permanent occupation by the military, if it be done by competent authority, the lands included therein are not subject to entry until properly restored to the public domain.

If the Secretary of War has the authority to establish a military post, it follows that during the time that the lands included therein are occupied for military purposes, they are not subject to be disposed of under the pre-emption laws. In the case of Wilcox *vs.* Jackson (13 Pet., 498) it is held as follows:

The President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties. Both military posts and Indian affairs, including agencies, belong to the War Department. Hence, we consider the act of the War Department in requiring this reservation to be made, as being in legal contemplation the act of the President; and, consequently, that the reservation thus made was in legal effect a
56 reservation made by order of the President, within the terms of Congress.

It is further held in said case as follows:

But we go further, and say that, whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands, and that no subsequent law or proclamation, or sale, could be construed to embrace it or to operate upon it, although no reservation were made of it.

The counsel for the Hackley heirs further contend that the cantonment did not cover the whole of the one hundred and sixty acres to which Hackley's claim attached, and that the appropriation by the military did not, therefore, extinguish his claim to that portion which lay outside of the limits of the cantonment.

Counsel insists that inasmuch as the buildings erected for the accommodation of Cantonment Brooke were located upon what is now known as lot 9 of said tract the said encampment was therefore limited to the spot upon which said buildings were erected.

This is untenable, for the reason that it is necessary for the convenience of the military to appropriate a considerable area of the public domain for wood, water and other purposes, and the fact that Hackley was ejected from his entire claim was itself an appropriation thereof.

In accordance with the views thereinbefore expressed, therefore, the claim of the Hackley heirs is denied.

The provisions of the act just mentioned have no application in adjusting any claim made to the land in controversy, for the reason that said lands had been segregated and occupied by troops in cantonment, for two years, at the date of its passage.

It seems to me that the proper disposition of said lands if governed by the provisions contained in the act of August 18, 1856 (Stat., 87), which provide that all lands heretofore reserved for military purposes in the State of Florida, etc., "shall be disposed of and sold in the same manner and under the same regulations as other public lands of the United States."

For the purposes of the present inquiry, it is not necessary to go into the details of the history of the Fort Brooke military reservation until the time of its final restoration to the public domain in January, 1883.

On March 22, 1883, the local officers at Gainesville, Florida, received an approved diagram of the subdivision into seven lots of the land formerly embraced in said reservation. On April 2,
57 thereafter, said officers were directed to allow no entries upon any land within said reservation. In the interval which elapsed between the 22nd of March and the 2nd of April, 1883, said lands were open to entry unless it was incumbent upon the commissioner to place the lands upon the market in the manner provided in the act of 1846, which contains the following provision in the fifth section thereof (section 2455 R. S.):

It shall and may be lawful for the Commissioner of the General Land Office to order into market, after due notice without the for-

mality and expense of a proclamation of the President, all lands of the second class, though heretofore unproclaimed and unoffered, and such other isolated or disconnected tracts or parcels of unoffered lands, which, in his judgment, it would be proper to expose to sale in like manner; provided, that public notice of at least thirty days shall be given by the land officers of the district — such lands may be situated, pursuant to the direction of the Commissioner aforesaid (9 Stat., 51).

It will be observed that the foregoing provision is discretionary with the Commissioner, inasmuch as it is a matter left to his judgment. Besides, it was the practice of the department, prior to October, 1885, to recognize the validity of homestead and pre-emption claims made immediately upon the filing of township plats; and in cases also where lands have been restored to the public domain by acts of forfeiture, homestead and pre-emption claims have been allowed to take effect immediately after the passage of such acts.

On the 2nd of October, 1885, Commissioner Sparks, with the approval of Secretary Lamar, issued instructions to registers and receivers (4 L. D., 202), which provides as follows:

Hereafter when approved plat of the survey of any township is transmitted to you by the surveyor general, you will not regard such plat as officially received at and filed in your office, until the following regulations have been complied with:

First. You will forthwith post a notice in a conspicuous place in your office, specifying the township that had been surveyed and stating that the plat of survey will be filed in your office on a day to be fixed by you and named in the notice, which shall be not less than thirty days from the date of such notice, and that on and after such day you will be prepared to receive applications for the entry of lands in such township, etc.

It seems that the foregoing instructions were issued for the reason that prior to said date, it had been the practice of the depart-
58 ment to recognize the validity of filings and entries immediately after the plat of survey, made by the surveyor general, was received at the local office. If, before that time, the reception of the plat of survey by the surveyor general to the local officers was regarded as a sufficient reason for the acceptance of filings and entries, much more would the reception of a plat of survey sent to the local office by the Commissioner of the General Land Office be regarded as such.

In the case at bar, the plat of survey sent by the Commissioner of the General Land Office was received at the local office on the 22nd day of March, 1883.

It may be that the land included within the Fort Brooke military reservation is an isolated and disconnected tract within the meaning of the act of 1846, but when such a tract belongs to the public domain, it is, nevertheless, open to settlement under the public land laws at all times before the Commissioner proceeds with the disposition of the same, under the provisions of said act. If, therefore, a

qualified entryman applies to make homestead entry upon such a tract, while it belongs to the public domain and before any steps have been taken by the Commissioner to dispose of the same under the authority given him by said act, his application should be allowed. After such an entry has been allowed and such a tract has been in that manner segregated, the Commissioner has no authority to dispose of it in any other manner.

The discretionary power vested in the Commissioner by said act of 1846, must be exercised before the segregating of the land. After an entry has been allowed, the rights of the entryman become vested and the provisions of the above mentioned act must be construed in harmony with them.

In vol. 2, L. D., 606, Secretary Teller, in treating of the question relating to the Fort Brooke military reservation, comes to the conclusion that the entry and filings made thereon, after the 22nd of March, 1883, were premature. It is held in said case that:

The act of 1856 and section 2364 must be read together.

Together they make the general law for the disposition by you of these Florida military reservations, and claimants are charged with notice of the whole law upon the subject.

Section 2364 of the Revised Statutes reads as follows:

Whenever any reservation of public lands is brought into market, the Commissioner of the General Land Office shall fix a minimum price not less than one dollar and twenty-five cents per acre, below which such lands shall not be disposed of.

59 It will be observed that the above recited act is limited in its terms to reservations "brought into market."

The act of 1856, provides that military reservations in Florida after being placed under the control of the General Land Office, are "to be disposed of and sold in the same manner and under the same regulations as other public lands in the United States."

Now, "public lands in the United States" are disposed of in various ways. On July 2d, 1864, the date of the passage of the act embodied in section 2364, public lands were disposed of under the homestead and pre-emption laws, and, when the Commissioner so directed certain lands were brought into market and sold to the highest bid-er.

Said section being limited by its own terms to the manner of disposition last mentioned, has no application except in those cases where the Commissioner in the exercise of his discretion under the law, had brought lands into the market to be sold at public auction. This construction is obvious unless it be held that the act of 1856, contemplates that no military reservation in Florida shall be disposed of in any other way than by public sale. I am of the opinion that the principle of construction employed in the decision above mentioned is untenable.

Under the authority vested in the Commissioner of the General Land Office by the acts of 1846 and 1856, and by section 2364 of the Revised Statutes, he might have brought into market and disposed of the same at public auction, the lands included in the Fort Brooke

military reservation, but he was not compelled to do so and up to this time has made no effort to have the same disposed of in that manner. It was legitimate, also, to dispose of said reservation under the homestead and pre-emption laws, and when the same was restored to the public domain, as hereinbefore mentioned, it was subject to entry under said laws. Section 2364 of the Revised Statutes, has no application to the disposition of the same unless the Commissioner of the General Land Office, in the exercise of his discretion, has seen proper to bring said reservation into market.

The Fort Brooke military reservation, at one time, included all the lands within sixteen miles square, and in 1883 it had been reduced by former relinquishment to less than one hundred and fifty acres. Almost the whole of said original reservation has been disposed of under the homestead and pre-emption laws. The fact that the land in controversy has become very valuable is no reason for the introduction of a different rule from that which has been
60 uniformly observed by the department in the disposition of other reservations prior to the act of 1884.

I am of the opinion, therefore, that the lands in controversy were open to entry from March 22 to April 2d, 1883, the day on which the local officers were instructed to allow no entries on the same.

The claims of all the other parties in interest are based upon applications made on and subsequent to the 22d day of March, 1883. The homestead entry of E. W. Carew, the husband of the claimant Mrs. L. W. Carew, was the first application made after the lands were restored to the public domain, and unless there was sufficient legal reason for the rejection, should have been allowed.

In the departmental decision complained of it is held a- follows:

The finding of the local officers and your office, that the entry of Carew and the settlement of Mather were not made in good faith, is supported by the evidence, and their claims were properly rejected.

I have searched the record with a view of ascertaining, if possible, the disclosures therein that go to impeach the good faith of E. S. Carew, and I have failed to find any admissable or competent evidence that justifies the conclusion reached in said decision.

The rejection of the claim of Mrs. L. W. Carew seems to have been predicated upon the testimony of J. T. Lesley, who appeared as witness in behalf of the city of Tampa.

Lesley testified that Senator Call notified him that he, the Senator, had instructed E. S. Carew to make pre-emption or homestead (claim) upon the reservation, and had instructed one Carlisle to make cash entry on the same, in order to secure it for the people of Tampa. He also informed witness that he had instructed Dr. Carew to draw upon him, Call, for the money. This Carew did. Witness paid the draft drawn by Carew upon Senator Call. A few days afterward Carew informed witness that he had received a telegram from Senator Call to make homestead entry upon said reservation and to draw upon him, Call, for the money. Carew told witness that he would turn over the homestead or pre-emption to the people of Tampa or would continue

the same, or prove it up. Witness explained to Carew why it was that he was requested to make the homestead (entry), which was to forestall speculation until Congress could pass an act donating it to the city of Tampa. Witness and others thought best to have the reservation homesteaded and to let the town have what it
61 wanted. Witness explained to Carew, who was interested in the scheme, what amount witness thought the city of Tampa would be satisfied with. Witness after consultation with parties interested and members of the town council, thought it best that, if Dr. Carew would agree to carry out, in good faith, such an arrangement and divide up the reservation as per agreement, he, Carew, should continue on the place. Witness told Dr. Carew, that, and Carew acquiesced in the arrangement.

Carew, witness and others, intended at the end of six months to commute this land, put it under the commutation act, and divide it out among the parties interested as per agreement. Witness afterwards called upon Carew to have an interview about the matter, and, to his astonishment Carew refused to do anything.

Carew then said he was the only person who had any rights and that he intended to retain them. Witness answered that while Carew might defeat the town of Tampa and the "balance of us" from getting this land, or any part of it, witness thought "we would be able to do the same with him," having no disposition to do anything of the kind but simply asking that the agreement thus made be carried out in good faith.

Carew refused to do so. Carew remained in the house secured for him up to the time of his death; his widow has lived in the same house ever since. Witness had no controversy or correspondence with Carew on or before the 22nd day of March, 1883, relative to the reservation or homestead thereon. According to the agreement witness had with Carew, the reservation was to be divided into six parts: Carew to have one; the town of Tampa one; W. B. Henderson one; S. M. Sparkman one; J. A. Henderson one; and witness one. Tampa was to make its selection and the balance to be divided equally among the other five. Parties interested were to pay all the expenses and Dr. Carew was to comply with the homestead law in regard to residence and cultivation.

After the failure to secure the land in 1883, there was a scrip entry made upon it by W. B. Henderson, and by him the same proposition was made to the city of Tampa. Witness owned an interest in this scrip after that time; witness's son now owns said interest.

Carew died in 1886.

It will be observed that at the time of the trial Carew had been dead several years, and that the witness was an interested party in the transaction in regard to which he testified.

In the statute of Florida, chap. 101, sec. 24, it is provided as follows:

No person offered as a witness in any court or before any
62 officer acting judicially, shall be excluded by reason of his interest in the event of the action or proceedings, or because he is a party thereto; provided, however, that no party to such action or proceeding, nor any person interested in the event thereof, nor any person from, through, or under whom any such party or interested person derives any interest or title by assignment or otherwise, shall be examined as a witness in regard to any transaction, or communication between such witness and the person at the time of such examination deceased, insane or lunatic, against the executor, administrator, heir-at-law, next of kin, assignee, or committee of such insane or lunatic, etc.

Besides it will be observed that the witness testified that he and Carew were parties to a scheme which involved perjury on the part of the witness himself. When Dr. Carew made his homestead entry he was compelled to swear that the same was done not for the benefit of any other person, persons, or corporation. He was also compelled to swear that he was " not acting as agent for any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation or syndicate to give them the benefit of the land entered or any part thereof," etc.

The scheme testified to by the witness was utterly inconsistent with the affidavit which had to accompany the homestead application of Carew, and the moral culpability implied on the part of a witness who, according to his own showing, testified in a revengeful spirit, because the other party to such a contract refused to carry out the same is sufficient to discredit his testimony in the absence of any other legal reason.

In my opinion the testimony of J. T. Lesley, in so far as it goes to impeach the good faith of E. S. Carew, is inadmissible from a legal standpoint, and harmless because of its other infirmities. There being no other obstacle in the way of the claim of Mrs. Carew, I am of the opinion that it should be allowed.

The legislature of Florida in the year 1889 merged the towns of Tampa and North Tampa into one corporation and extended the limits of the city so as to include the reduced military reservation, and upon this legislative enactment the city of Tampa bases its claim to the said reservation to be used as a public park and for other purposes.

The testimony failing to show that any considerable portion of the same was used and occupied for trade and business, the said claim was properly rejected in the opinion under review.

63 To avoid confusion, I note that by the diagram approved by your office and transmitted to the local office in 1883, Fort Brooke was divided into seven lots numbered 8, 9, 10, 12, 13, 14 and 16. According to the public survey, lots 8, 9 and 10 fall within sec. 24 T. 29, S. R. 18 E.; lots numbered 12, 13 and 14 fall in sec. 19, T. 29, S. R. 19 E.; and lot numbered 16 falls within sec. 18, T. 29, S. R., 19 E.; Gainesville, Florida.

On the 22d day of March, 1882, the day on which the lands included in the Fort Brooke reservation were open to entry, Louis Bell was residing upon that subdivision known as lot No. 8, sec. 24, T. 29, S. R., 18 E., intending to make the same his permanent home. He was qualified and sought to assert his settlement rights by an application to file prior to the order in which the local officers were directed to allow no entries upon said lands. The claim of the heirs of Bell might properly be rejected upon the technical ground that the land in controversy was, at that time, included in the homestead entry of Carew, but inasmuch as said homestead claim was subsequently limited so as to exclude the lot or subdivision upon which Bell resides, and inasmuch as there is no other claimant to said legal subdivision who has a superior right to Bell, and for the further reason that his good faith calls for the exercise of the supervisory power of the department, the same will be upheld, but limited to said subdivision.

The telegram sent from your office on the 2d of April, 1883, to the local officers directing them to allow no entries upon the lands within said reservation, was doubtless made upon the idea that said lands could not be disposed of otherwise than by being brought into market and sold at public auction.

There being now no reason why said order should remain longer in force, especially in view of the fact that the claims of Carew and Bell, both of which were of record or offered prior to the date of said order, include the most valuable lands in the reservation aforesaid, the same is hereby revoked.

The claims of Julius Caesar to lot No. 13, and of Martha Stillings, wife and heir of Andrew Stillings, deceased, to lot No, 12 of sec. 19, T. 29, S. R. 19 E., and that of Frank Jones to lot No. 16, sec. 18, T. 29, S. R. 19 E., are in the same condition as that of Louis Bell, with the exception that said claims were asserted subsequent to the date of the order from your office directing that no entries be allowed upon the lands of said reservation.

The settlement rights of Caesar, Stillings and Jones had
64 attached prior to the date of said order, and were simply held in abeyance by it. You will, therefore, direct that their claims be allowed to the lots or subdivisions upon which they respectively resided, should there be no intervening reason in either case for a different disposition of said lots.

The claim of W. B. Henderson to locate, Gerard scrip on lots Nos. 8 and 9, sec. 24, T. 29, S. R. 18 E., must be denied on account of its conflict with the prior rights of Louis Bell and Mrs. Carew.

The declaratory statement of Daniel Mather was properly rejected in the light of the record which discloses the fact that he never contemplated making his permanent home upon any land inside the Fort Brooke reservation and that he abandoned his claim in 1885.

The remaining lot in said reservation, to-wit: lot No. 14, sec. 19, T. 29, S. R. 19 E., was settled upon by E. B. Chamberlain on the 7th of July, 1883, and upon that settlement he bases his claim.

The order emanating from your office directing the local officers to allow no entries, was no bar to initiating a settlement claim, and said order having been herein revoked, his claim will be allowed to said lot, should there be no other legal obstacle in the way of his perfecting the same.

It will be observed that I have recognized the settlement rights of Bell and others, in this case, and the question might arise that since the settlement of Bell, for instance, was made prior to the homestead entry of Carew, and his rights thereunder were asserted by him the time prescribed by law, that his claim would be superior to that of Carew, whose settlement began from his entry.

A settler is defined to be:

A person who intending to initiate a claim under any law of the United States, for the disposition of the public domain, does some act connecting himself with the particular tract claimed, said act being equivalent to an announcement of such intention, and from which the public generally may have notice of his claim. (2 L. D., 628.)

In the light of this definition, the record discloses no act on the part of Mr. Bell, or the other claimants, which connects him or any of them, "with the particular tract claimed," outside of the lots or subdivisions upon which they respectively reside, until after the same was covered by Carew's entry.

I recognize the rulings of the department that where an entryman is claiming a quarter-section of land and has made settlement upon one forty-acre tract of the quarter-section which he claims, that his settlement rights will be construed to cover the whole of the technical subdivision.

This rule, however, is limited by the condition that it must appear that the entryman intended to claim the particular technical subdivision which embodies the tract upon which he has made settlement.

If it should appear, for instance, that a person has made a settlement upon one-quarter of some particular section of public land, and intends to claim a portion also of some other section, then the rule above referred to does not apply.

In order to avail himself of such a claim his acts of settlement must cover the whole tract.

Now the Fort Brooke military reservation includes portions of three separate sections of public land. A claimant, therefore, who seeks to acquire title to the whole of said reservation, must show such acts of settlement as extended to the entire tract.

But it may be suggested that the legal subdivision upon which Bell resides, according to general public survey, is the same as that upon which Carew resides, and that under a proper construction of the rule hereinbefore discussed, the settlement rights of Bell should be held to extend at least to cover the lots upon which Carew resides.

The reply is that Mr. Bell has never limited his claim to any technical quarter-section of land, and the rule applies to such claimants only.

The decision under review, for the reasons hereinbefore mentioned, is set aside and you will direct that the lands formerly included within the Fort Brooke military reservation be disposed of in accordance with this opinion.

Herewith are returned the papers.

Very respectfully, HOKE SMITH, *Secretary.*

66 EXHIBIT "K."

F. L. C. H. B. P. G. B. G.
G. B. G.
DEPARTMENT OF THE INTERIOR, V. B.
WASHINGTON, *March* 8, 1898. L. R. S.

3206—1897.

JOSEPH W. BILBIE ET AL.—On Petition.

The Commissioner of the General Land Office.

SIR: Joseph W. Bilbie and numerous other citizens of Hillsborough county, Florida, and alleged residents upon lands in said county, which were formerly part of the Fort Brooke military reservation in said State, have filed in this department a petition asking that suit be instituted to set aside certain patents heretofore issued for said lands.

Said petition was duly entertained, returned for service, and the parties in interest have filed their respective answers.

By departmental decision of July 24, 1894, (on review), 19 L. D. 48, certain lands in said reservation were awarded to the parties in interest, and patents issued in due course as follows:

To the heirs of Lewis Bell, deceased, lot 8, sec. 24, T. 29, S.

To the widow of Edward S. Carew, deceased, lots 9 and 10, same section, township and range.

To Frank Jones, lot 16, sec. 18, same township and range.

To Martha Stillings (now Turner), widow and heir of Andrew Stillings, deceased, lot 12, sec. 19, same township and raige.

To Julius Caesar, lot 13, sec. 19, same township and range.

To E. B. Chamberlain, lot 15, same section, township and range.

These are the patents which the petitioners seek to vacate.

The history of the litigation and administrative procedure in the Interior Department, which was finally closed, so far as lies within this jurisdiction, by the issuance of the aforesaid patents, is briefly as follows:

Under instructions from the War Department in March, 1824, certain lands in the State of Florida, were occupied by the United States troops in cantonment, and on December 10, 1830, the Fort Brooke military reservation, covering an area of sixteen miles
67 square, was established by executive order. After various restrictions and modifications the remainder, containing 148.11

acres, was on January 4, 1883, duly relinquished, in writing by the Secretary of War, and, on the 17th of March, 1883, a plat of the tract so relinquished was sent to the local office at Gainesville, Florida, with Commissioner McFarland's letter of that date, as follows:

Herewith inclosed I transmit for the files of your office an approved diagram of the subdivision into lots of the late Fort Brooke military reservation in Florida, in secs. 18 and 19, T. 29, S. R. 19 E., and sec. 24, T. 29, S. R. 18 E., relinquished by the Secretary of War to this department in writing under date January 4, 1883.

The plat referred to was received at the local office at 4:45 o'clock p. m., March 22, 1883. On that day, at 4:50 o'clock p. m., Edward S. Carew made homestead entry, covering the whole tract.

On April 2, 1883, the Commissioner of the General Land Office instructed the local officers, by telegram, to allow no entries upon and (any) land within said reservation.

On December 17th, 1883, Commissioner McFarland, considering the status of said land and the law applicable thereto, held that the land released from reservation was, by the act of August 18, 1856, (11 Stat. 87), placed under the control of the General Land Office for disposal, that the manner of disposition therein provided for was modified by the act of July 2, 1864, (R. S. 2364), and the act of August 3, 1846, (R. S. 2455), and that it was not subject to entry under the homestead and pre-emption laws, nor scrip location.

Pursuant to said decision, on January 22, 1884, said Commissioner held for cancelation the homestead entry of Carew and the pre-emption declaratory statements of Clifford Herrick and Lewis Bell.

On appeal to the department, Mr. Secretary Teller, on May 16, 1884, (2 L. D. 606), affirmed the Commissioner's decision, holding that the entries and filings upon the tracts in question were premature, and did not foreclose further action by the Commissioner under the provisions of section 2364 of the Revised Statutes, and said:

I am further of the opinion that section 2364 of the Revised Statutes is not inconsistent with said act of August 18, 1856, and that, as it is a general statute, without restriction, it applies to the disposition and sale of reservations in Florida as elsewhere.

You sent the plat to the local office to be filed, but you neither instructed the officers to open the land for settlement nor to
68 withhold them. Perhaps, you might have disregarded the provisions of section 2364 (considering them only as directory), and instructed the local officers to receive entries and filings for the tracts. In the absence of any instructions, I do not think the filing of the plat of itself foreclosed any further action on your part, and precluded you from applying to the lands the provisions of that section intrusted to your office.

The act of 1856 and section 2364 must be read together. Together they make the general law for the disposition by you of these Florida military reservations, and claimants are charged with notice of the whole law upon the subject.

On May 10, 1887, (5 L. D. 632), Acting Secretary Muldrow considered the application of Daniel Mather to make pre-emption entry of lots 8, 9 and 10 on said reservation, on the said Mather's appeal from the rejection thereof, and held that the disposition of lands in said reservation was governed by the act of July 5, 1884, (23 Stat. 103), and that said act protected the rights of settlers prior to January 1, 1884, who were qualified to make homestead entry.

On June 4, 1887, the Honorable Wilkinson Call, a United States Senator from Florida, filed in the department a request that the said case of Daniel Mather be reconsidered, for two reasons—one of which was that a bill had been favorably reported by the Committee on Public Lands to donate said reservation to the town of Tampa.

The attention of Mr. Secretary Vilas was called to this report, whereupon he ordered a hearing for the purpose of determining whether said land is included within the limits of an incorporated town, or occupied for the purposes of trade and business, and to determine the character of Mather's settlement, and whether it was simply as an occupant by permission of the military authorities, and to this end, all the papers before the department in the case of Mather and also in the case of Lizzie W. Carew, were returned.

A hearing was had, at which all the conflicting alleged interests were heard, and, on November 25, 1892, (15 L. D. 487), Mr. Secretary Noble rendered a final decision on the record, rejecting all of the claims to the land, among which were the claims of E. S. Carew, Daniel Mather, Andrew Stillings, Julius Caesar, Louis Bell, E. B. Chamberlain, the heirs of R. J. Hackley, deceased, and also the mayor and city council of Tampa. It was held that the land had never been thrown open to settlement and entry, and said:

69 Under the law as it now stands, said reservation will be disposed of whenever the Secretary of the Interior is of the opinion the public interests so require, under the provisions of said act of 1884. * * * Action looking to the disposal of said land will be deferred until you are further advised by this department.

Motions for review of this decision were filed, upon the consideration of which the aforesaid decision of Secretary Smith of July 24, 1894, was rendered, wherein it was held from *from* the time the aforesaid plat was received in the local office, on March 22, 1883, until April 2, 1883, when the telegram was received directing that no entries be allowed, said land was subject to entry as other public lands, of the United States; that the entry was a valid appropriation of the land, except as to prior adverse subsisting settlement rights, which settlement rights were recognized and award made, as heretofore appears, and it was specially held that there was no competent evidence in the record tending to show that the entry of Carew was made in bad faith.

The pertinent legal conclusions are set forth in the syllabus of said decision as follows:

The act of July 5, 1884, providing for the disposition of abandoned military reservations, is limited in its application to military reser-

vations that were in existence at the date of its passage, or that should be thereafter created.

The disposition of a military reservation in Florida, abandoned and restored to the public domain prior to the passage of the act of July 5, 1884, is governed by the provisions of the act of August 18, 1856, and under said act the Commissioner of the General Land Office was authorized to dispose of such lands either at public sale or under the homestead and pre-emption laws.

It is submitted by the petitioners that these lands have been disposed of without authorization of law, and the various claims, especially the Carew claim, conceived and initiated in fraud, and perfected by false pretense and perjury.

The act of August 18, 1856, (*supra*), provided:

That all public lands heretofore reserved for military purposes in the State of Florida, which said lands, in the opinion of the Secretary of War, are no longer useful or desired for such purpose, or so much thereof as said Secretary may designate, shall be, and are hereby placed under the control of the General Land Office, to be disposed of and sold in the same manner and under the same regulations as other public lands of the United States.

70 The sixth section of the act of June 12, 1858, (11 Stat. 336), provided:

That all the existing laws or parts of laws which authorize the sale of military sites, which are or may become useless for military purposes, be, and the same are hereby repealed, and said lands shall not be subject to sale or pre-emption under any of the laws of the United States: Provided, further, that the provisions of the act of August eighteenth *eight* (eighteen) hundred and fifty-six, relative to certain reservations in the State of Florida, shall continue in force.

The act of July 2, 1864 (*supra*), provided:

That whenever any reservation of public lands shall be brought into market under existing laws, it shall be lawful for the Commissioner of the General Land Office to fix a minimum price, not less than one dollar and twenty-five cents per acre, below which said lands shall not be disposed of.

This act was carried into section 2304 of the Revised Statutes, but there made to read, not that "it shall be lawful for the Commissioner," &c., but the Commissioner "shall fix a minimum price, not less than one dollar and twenty-five cents per acre below which such lands shall not be sold."

The act of July 5, 1884, (23 Stat. 103), provides:

That whenever, in the opinion of the President of the United States, the land-, or any portion of them, included within the limits of any military reservation heretofore or hereafter declared have become or shall become useless for military purposes, he shall cause the same or so much thereof as he may designate, to be placed under the control of the Secretary of the Interior, for disposition as hereinafter provided, and shall cause to be filed with the Secretary of the Interior a notice thereof.

Section 2 of this act provides for the manner of disposition, which is "at public sale to the highest bidder for cash."

Provided, that any settler who was in actual occupation of any portion of any such reservation prior to the location of such reservation, or settled thereon prior to January first, eighteen hundred and eighty-four, in good faith, for the purpose of securing a home and of entering the same under the general land laws, and has continued in such occupation to the present time, and is by law entitled to make a homestead entry, shall be entitled to enter the land so occupied, not exceeding one hundred and sixty acres, in a body, according to the Government surveys and subdivisions. Provided further, that said lands were subject to entry under the public land laws at the time of their withdrawal.

71 Section 4 provides:

That the provisions of the act of August eighteenth, eighteen hundred and fifty-six, relative to military reservations in the State of Florida, and the sixth section of the act of June twelfth, eighteen hundred and fifty-eight, relative to the sale of military sites, be and the same are hereby, repealed.

This legislation may be summarized as follows:

The act of 1856 provided that military reservations in the State of Florida, no longer useful for that purpose, should be placed under the control of the General Land Office to be disposed of and sold in the same manner and under the same regulations as other public lands of the United States.

The act of 1858 did not change or modify the act of 1856.

The act of 1864 (section 2304 R. S.), made it lawful for the Commissioner of the General Land Office to fix a minimum price, not less than one dollar and twenty-five cents per acre, below which any reservation of public lands brought into market should not be disposed of, and the revision (sec. 2304) made mandatory what was by the original act permissive and discretionary.

The act of 1884 provided for the disposition of all such lands at public sale to the highest bidder for cash, but protected the rights of settlers in actual occupation prior to the location thereof, or who settled thereon prior to January 1, 1884, in good faith, for the purpose of securing a home and of entering the same under the general laws, and had continued in such occupation to the date of the act. Provided further, "that said lands were subject to entry under the public land laws at the time of their withdrawal," and the fourth section of said act specially repealed the aforesaid act of 1856.

Departmental decision of July 24, 1894, does not refer to the fact that the act of 1884 repealed the act of 1856, but whether such fact was overlooked or considered and not thought material, it is not now believed that the fact of such repeal rendered the disposition of the lands, as directed by said decision, unlawful or erroneous.

It is reasonably clear that prior to the passage of the act of 1884, the act of 1856 was the only legislation governing the disposition of lands occupying the status of those here involved. It was a

special act providing for the disposition of lands theretofore reserved for military purposes in the State of Florida, and that disposition was to be in the same manner and under the same regulations as other public lands of the United States. This included, at the date the lands in the Fort Brooke military reservation
72 were placed under the control of the General Land Office, homestead entries and pre-emption filings.

The same purpose was again expressed by Congress in the act of 1858, continuing in force the provisions of the act of 1856.

The act of 1864 was a general act, and whether it be considered as permissive or mandatory, did not repeal or modify that act of 1856.

General statutes do not affect special ones, unless such is clearly the legislative intention, and no such intention here appears, either express or implied. Moreover, the fact that Congress saw fit to repeal the act of 1856, in 1884, is legislative recognition of the act at that time as existing law. If, therefore, rights had been lawfully acquired by homestead entry, and the proceedings of the land office had by virtue of authority of the act of 1856, it was not unlawful to allow those rights to be perfected under the homestead law, even though the act which authorized the disposition of the land under the homestead law, had been repealed.

At the time of the filing of the township plat as aforesaid, at the local office, the Land Department had full jurisdiction of the land, and was authorized, as has been seen, to dispose of the same under the homestead and pre-emption laws. Under the practice at that time, a township plat was treated as officially received and filed at the moment of time it reached the local office, and homestead entries and pre-emption filings were recognized as valid made immediately thereafter. This practice was changed in October, 1885, (4 L. D. 202), but it was the practice in force March 22, 1883. It results that, at that time the General Land Office having full authority to dispose of said lands under the homestead law, the entry of Carew was such an appropriation thereunder that subsequent legislation relating to the disposition of like lands would not operate upon it, and this is true regardless of the fact that part of the land was afterwards awarded to other parties in the adjustment of equitable priorities.

On the question of the alleged fraud in making the entry, it may be said that, conceding the United States to be under such obligations to the petitioners as would authorize it to institute a suit for their benefit, it is not believed that such suit could be successfully maintained even though the fraud was perpetrated, as alleged.

It appears that the charge now made, that Carew and other parties entered into a conspiracy to defraud the Government of this land, was specifically considered by the department in its decision
73 of July 24, 1894, (*supra*), and it was therein found that said entry was made in good faith, and that the evidence did not establish the charge of conspiracy.

Whatever difference of opinion might exist as to the correctness of that finding, it is now conclusive of that issue, the land having been patented in pursuance of that decision. The department is without jurisdiction to reverse it, and inasmuch as it is a finding on a question of fact, the courts will not review it. Fraud is a mixed question of law and fact, but the department has here found that the claimed facts upon which the alleged fraud rested did not exist.

The general allegation by the petitioners of fraud in the submission of final proof is not sustained by the record.

Moreover, it does not appear that the United States is under any such obligation to the petitioners as would enable it to maintain a suit for their benefit.

The Supreme Court of the United States, in the case of The United States *vs.* San Jacinto Tin Company (125 U. S. 285) says:

We are of opinion that since the right of the Government of the United States to institute such a suit depends upon the same general principles which would authorize a private citizen to apply to a court of justice for relief against an instrument obtained from him by fraud or deceit, or any of those other practices which are admitted to justify a court in granting relief, the Government must show that, like the private individual, it has such an interest in the relief sought as entitles it to move in the matter. If it be a question of property a case must be made in which the court can afford a remedy in regard to that property; if it be a question of fraud which would render the instrument void, the fraud must operate to the prejudice of the United States; and if it is apparent that the suit is brought for the benefit of some third party, and that the United States has no pecuniary interest in the remedy sought, and is under no obligation to the party who will (be) benefited to sustain an action for his use; in short, if there does not appear any obligation on the part of the United States to the public, or to any individual, or any interest of its own, it can no more sustain such an action than any private person could under similar circumstances.

There is nothing in connection with the proceedings had in the disposition of the land involved which has operated prejudicially on any legal or equitable right of the petitioners. They are mere squatters, and even if these patents were vacated, it does not
74 appear how they are to be benefited. In that event, the lands would have to be disposed of under the act of 1884, *supra*, which is at public sale to the highest bidder for cash.

Conceding for the sake of argument that the petitioners settled on said land prior to January first, eighteen hundred and eighty-four, in good faith, for the purpose of securing a home and of entering *a home and of entering* the same under the general land laws, and had continued such occupation to the date of said act of 1884, they would not be protected by the proviso to said act, for the reason that said lands were not subject to entry under the public land laws at the time of

their withdrawal, hence the provision in that act for the benefit of settlers has no application in the disposition of these lands.

Another obstacle in the way of a successful maintenance of a suit to vacate these patents lies in the fact, made to appear by affidavits and exhibits, that all or nearly all of the land so patented has been sold and conveyed to third parties. The presumption is that such parties are innocent purchasers for value and without notice of any defect in the title to the patentees, on account of fraud or other infirmity. Even if the patents were procured through fraud, unless they were absolutely void on that account, such purchasers would be protected by the courts.

The fraud here alleged, even if permitted to be shown in the courts after the proceedings had thereon in the Land Department, is not of the character that would authorize a vacation of the patents as against such purchasers. If the fraud as alleged were established, it would render the patents voidable only, and under such a patent innocent purchasers for value and without notice would take a perfect title.

It is not believed that the suit prayed for could be maintained.

The petition is dismissed, and the papers are herewith transmitted for the files of your office.

Very respectfully, C. N. BLISS, *Secretary.*

(L. & R. vol. 369, p. 373 *et al.*)

(Indorsed:) In the circuit court of the United States in and for the southern district of Florida, in chancery. Sallie Field Scott *et al.*, *versus* Lizzie W. Carew, *et al.* Bill of complaint. Filed this 31st day of December, A. D. 1900. E. O. Locke, clerk, by H. L. Crane, deputy clerk. Fleming and Fleming, William H. and George H. Lamar, Munford and Anderson, counsel for complainants.

75 The President of the United States of America to Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall, defendants, Greeting:

You are hereby commanded and strictly enjoined that, laying all other business aside and notwithstanding any excuse, you personally be and appear before the judge of our circuit court for the southern district of Florida on the first Monday, the fourth day of February, A. D. 1901, wherever the court may then be, to answer a bill of complaint exhibited against you in said court by Sallie Field Scott, Eliza Madison Scott, Harriet B. Jones, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Sallie Hackley, Mary Hackley, Maria Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley, and Stephen P. Hackley, complainants, and to do further and receive what our said court shall have considered in that behalf.

And this you are not to omit under a penalty of five hundred dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States at the city of Tampa, on the thirty-first day of December, 1900, and of the Independence of the United States one hundred and twenty-fourth.

[COURT SEAL.]

E. O. LOCKE,
Clerk U. S. Circuit Court,
By H. L. CRANE,
Deputy Clerk.

Defendants are to enter appearance at the clerk's office at Tampa on or before the fourth day of February, A. D. 1901, otherwise the bill may be taken *pro confesso*.

E. O. LOCKE, *Clerk,*
By H. L. CRANE, *D. C.*

(*Marshal's Return.*)

Received this writ on the 4th day of Jan'y, 1901, at Tampa, Florida, and executed the same by delivering a true copy to Lizzie W. Carew, E. R. Gunby, M. G. Gibbons, M. M. Nelson and E. C. Beach, and exhibiting the original to them personally at Tampa, Florida, on the 5th day of January, 1901.

JOHN F. HORR,
U. S. Marshal,
By JOHN R. WILLIAMS,
Dept. Marshal.

Received this writ at Ocala, Fla., on Jan. 9, 1901, and executed the same on or before Jan. 10, 1901, at Gainesville, Fla., by
76 delivering a true copy to the within named W. W. Hampton and S. Y. Finley, and in each case exhibiting this original writ.

JOHN F. HORR,
U. S. Marshal,
By D. E. PEACOCK, *Deputy.*

George W. Hall lives in Evansville, Wis., and consequently was not served.

J. R. WILLIAMS, *Deputy.*

Received this writ at Tampa, on January 4th, 1901, and failed to execute the same on George W. Hall by making a diligent search for him and could not find him in my district, this Jan'y 15th, 1901.

JOHN F. HORR,
U. S. Marshal,
By JOHN R. WILLIAMS.

(Indorsed:) Circuit court of the United States for the southern district of Florida. In chancery. Sallie Field Scott *et al. versus* Lizzie W. Carew *et al.* Subpœna Dec. 31, 1900, returnable Feb'y 4, 1901. Filed this 18th day of January, A. D. 1901. E. O. Locke, clerk, by H. L. Crane, deputy clerk.

Amendment to the Bill of Complaint in This Cause.

In the Circuit Court of the United States for the Southern District of Florida.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } In Chancery.

Insert on page 32 in the prayer of said bill after the words: "to convey said lands to your complainants" the following: And that the said defendants be decreed to render a statement of all sales and conveyances made by them and each or any of them of portions of said lots 9 and 10 of section 24, T. 29, S. R. 18 E., and render an account of all monies, choses in action or other valuable consideration received by them for such sales and conveyances. And that they may be decreed to hold the same in trust for and to pay the same over to your complainants in such terms and conditions as may be agreeable to equity.

FLEMING & FLEMING,
WM. H. LAMAR,
GEO. H. LAMAR,
MUNFORD AND ANDERSON,
Complainants' Solicitors.

77 (Indorsed:) In the circuit court of the U. S., southern district of Fla. In chancery. Sallie Field Scott *et al. vs.* Lizzie W. Carew *et al.* Amendment to bill. Fleming & Fleming, Geo. H. and Wm. H. Lamar, Munford & Anderson, attorneys for complainants. Filed this 3rd day of January, A. D. 1901. E. O. Locke, clerk, by H. L. Crane, deputy clerk.

In the Circuit Court of the U. S. for the Southern District of Florida.
In Chancery.

SALLIE FIELD SCOTT, ELIZA MADISON SCOTT, HARRIET B. JONES, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Sallie Hackley, Mary Hackley, Maria Hackley, Mary F. Hackley, Sallie Strachen Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley, and Stephen P. Hackley, Complainants,
vs.
LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, M. G. GIBBONS, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall, Defendants.

Bill to establish trust, etc.

To the clerk of said court:

The appearance of S. Y. Finley, M. M. Nelson and E. C. Beach, defendants in the above entitled cause by S. Y. Finley their attorney is hereby made in said cause; and this their appearance will be filed and entered by said clerk and oblige.

S. Y. FINLEY,
In Pro. Per. and as Solicitor for M. M. Nelson and E. C. Beach, Defendants Herein.

(Indorsed:) In the circuit court of the U. S. for the southern district of Florida. In chancery. Sallie Field Scott *et al.* vs. Lizzie W. Carew *et al.* The appearance of M. M. Nelson, E. C. Beach, and S. Y. Finley Filed this 30th day of January, A. D. 1901. E. O. Locke, clerk, by H. L. Crane, deputy clerk. S. Y. Finley for above defendants.

78 In the Circuit Court of the United States for the Southern District of Florida.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall, Defendants. } In Chancery.

Appearance of Defendants.

The clerk of said court will please enter this our appearance as attorneys for the defendants Lizzie W. Carew, W. W. Hampton,

E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach and George W. Hall, as of rule day in February, A. D. 1901, and oblige:
This February 4th, A. D. 1901.

W. W. HAMPTON,
GUNBY & GIBBONS,
H. S. HAMPTON,
Solicitors for Defendants, Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, and Geo. W. Hall.

(Indorsed:) In U. S. circuit court, southern district of Florida. Sallie Field Scott *et al. vs.* Lizzie W. Carew *et al.* Appearance. Filed this 2nd day of February, A. D. 1901. E. O. Locke, clerk, by H. L. Crane, deputy clerk. W. W. Hampton, Gunby & Gibbons and H. S. Hampton, sol's for def'ts.

In the Circuit Court of the United States for the Southern District of Florida.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } In Chancery.

The clerk will please enter my appearance for E. R. Gunby and M. G. Gibbons, two of the defendants in the above entitled cause, and oblige.

WM. HUNTER,
Solicitor for Defendants.

(Indorsed:) In the circuit court of the United States for the southern district of Florida. Sallie Field Scott *et al. vs.* Lizzie W. Carew *et al.* Appearance of E. R. Gunby and M. G. Gibbons.
79 Filed this first day of February, A. D. 1901. E. O. Locke, clerk, by H. L. Crane, deputy clerk. William Hunter, solicitor for def'ts.

In the Circuit Court of the United States for the Southern District of Florida.

SALLIE FIELD SCOTT, ELIZA MADISON SCOTT, Harriet B. Jones, Froeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Hackley Morrison, Maria Hackley, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachen Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley, and Stephen P. Hackley	In Chancery.
vs.	
LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall.	

Bill for declaration of trust for relief, etc.

The demurrer of Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, and George W. Hall, defendants, to the bills of complaint of Sallie Field Scott and others, the above named complainants.

These defendants severally by protestation not confessing all or any of the matters and things in the complainants' bills of complaint contained to be true in such manner and form as the same are therein set forth and alleged, do demur to the said bills and for cause of demurrer showeth, that:

1st. The alleged settlement and cultivation by Robert J. Hackley of the lands involved, in 1823 and 1824, did not confer upon or vest in the said Robert J. Hackley any right or lawful claim to any part of the lands described in complainants' bills, because such entry upon and possession of said land was without authority of law and in direct violation of the acts of Congress in force in the State of Florida at that time (act March 3, 1807, 2nd Stat. 445; act M'ch 30, 1822, 3rd Stat. 654).

2nd. The act of April 22, 1826, giving the right of pre-emption to settlers upon lands in Florida pursuant to the terms and provisions of the act of Feb. 5, 1813, did not and could not have a retroactive effect upon the unlawful possession of the unsurveyed lands described in complainants' bills by Robert J. Hackley, because the said acts referred to surveyed lands of the Government and
80 were not intended to confer pre-emption rights in unsurveyed Government lands.

3rd. The act of April 22, 1826, making the act of Feb. 5, 1813, operative in Florida, did not and could not have a retroactive effect upon the unlawful entry upon and possession of the lands described in complainants' bills by the said Robert J. Hackley, for the reason

that prior to the enactment of the law of April 22, 1826, the said lands had been entered upon and taken possession of by the Government, and the Government continued in possession thereof until the same were platted and offered for entry in 1883.

4th. It appears from the allegations of complainants' bills, and from the exhibits attached thereto, that Robert J. Hackley did not and could not in his lifetime conform to the requirements of section 1 of the act of Congress of April 22, 1826, and of section 2 of the act of Congress of Feb. 5, 1813, and therefore acquired no rights thereunder.

5th. Robert J. Hackley, having failed to acquire any vested rights in and to the lands described in complainants' bills, at the time of his death he had no interest in such lands which could descend to his heirs, the complainants herein.

6th. It does not appear from the allegations of complainants' bills that Robert J. Hackley was ever in lawful possession and occupancy of the lands described in said bills or any part thereof.

7th. It does not appear in and by the allegations of complainants' bills that a declaratory statement was filed by the administrator of the estate of Robert J. Hackley, or by his heirs, within three months after the receipt and filing at the district land office of the approved plat of the township embracing the alleged pre-emption settlement as required by sections 2266 and 2269 of the Revised Statutes of the United States, and a failure to file said declaratory statement within the time prescribed by the act of Congress was a forfeiture of any rights Robert J. Hackley or his estate or his heirs may have acquired by virtue of the alleged settlement upon said Government lands.

8th. It does not appear in and by the allegations of complainants' bills that the administrator of the estate of Robert J. Hackley, deceased, or his heirs, made proper proof and payment for the lands described and claimed therein within thirty months after the date prescribed therein respectively for filing their declaratory notices had expired, as required by sections 2267 and 2269, Revised Statutes of the United States, and a failure to make such proper proof
81 and payment within the period required by the act of Congress was a forfeiture of any rights that may have been acquired by virtue of the alleged settlement of Robert J. Hackley upon said land.

9th. The Secretary of the Interior having decided that Robert J. Hackley and his heirs and his legal representatives had not conformed to the provisions of the acts of Congress of the United States prescribing the requirements for acquiring pre-emption rights therein, and the same being a mixed question of law and of fact, the said decision of the said Secretary became final and cannot be reviewed by the courts.

10th. The Honorable Secretary of the Interior of the United States having decided, on March 8, 1898, as shown by Exhibit K to complainants' bills, that all of the defendants except Lizzie W. Carew,

the sole heir at law of the original patentee, were innocent, *bona fide* purchasers as shown by the evidence before the Interior Department, such fact became finally adjudicated and cannot now be reviewed by the courts, and the bills in this cause, as to all of the defendants except Lizzie W. Carew, should be dismissed.

11th. It appearing from the allegations in complainants' bills that patent issued on the 30th of July, 1896, and that the title of all of the defendants who purchased from Lizzie W. Carew was predicated upon said patent, such purchases are *bona fide* and legal in the absence of fraud, and complainants' bills should be dismissed as to all of the grantees of Lizzie W. Carew.

12th. There is no specific allegation of error of construction of law in complainants' bills, and in the absence of such specific allegation this suit can not be maintained and complainants' bills should be dismissed.

13th. It appears from the allegations of complainants' bills that patent issued for the lands involved in this suit, to Edmund S. Carew, on the 30th of July, 1896, more than four years before the filing of complainant's original bill, and this suit is barred by the statute of limitations of the State of Florida, par. 4, sec. 1294, of the Rev. Stats. of the State of Florida.

14th. The said bills of complaint do not contain any matter of equity whereon this court can ground any decree or give to the complainants or either of them any relief against these defendants or either of them.

Wherefore, and for divers other good causes of demurrer appearing in the said bills, the defendants do demur thereto and humbly demand the judgment of this court whether they shall be
82 compelled to make any other or further answer to the said bills, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

W. W. HAMPTON,
GUNBY & GIBBONS,
H. S. HAMPTON,
WM. HUNTER,
Solicitors for Defendants.

Certificate of Counsel.

STATE OF FLORIDA, }
Alachua County. }

I, W. W. Hampton, of counsel for the several defendants named in the foregoing demurrer, do herein and hereby certify that in my opinion the above and foregoing demurrer is well founded in point of law. This 20th day of February, A. D. 1901.

W. W. HAMPTON,
Of Counsel for Defendants Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, and Geo. W. Hall.

STATE OF FLORIDA, }
Hillsborough County. }

Personally came before me Lizzie W. Carew, E. R. Gunby, M. G. Gibbons, M. M. Nelson and E. C. Beach, to me well known, each of whom being duly sworn, each for herself and himself deposes and says, that affiant is one of the defendants in this suit, and that the foregoing demurrer is not interposed for delay.

MRS. LIZZIE W. CAREW.
M. M. NELSON.
E. C. BEACH.
M. G. GIBBONS.
E. R. GUNBY.

Sworn to and subscribed before me on this 27th day of February, A. D. 1901.

[SEAL.] WILLIAM HUNTER,
Notary Public, State at Large.

STATE OF FLORIDA, }
Alachua County. }

Personally came before me W. W. Hampton, one of the defendants herein, who being duly sworn deposes and says that he
83 is one of the defendants in the above styled cause and that he is the duly authorized attorney for George W. Hall, one of the defendants, and that the said George W. Hall is absent from the State of Florida. Affiant further swears that the foregoing demurrer is not interposed for the purpose of delay.

W. W. HAMPTON.

Sworn to and subscribed before me on this 20th day of Feb'y, A. D. 1901.

[NOTARIAL SEAL.] E. E. VOYLE,
Notary Public, State of Florida at Large.

(Indorsed:) In circuit court of United States, 5th circuit, in and for southern district of Florida. In equity. Sallie Field Scott *et al. vs.* Lizzie W. Carew *et al.* Demurrer of def'ts to bill of compl't. Filed this 1st day of March, A. D. 1901. E. O. Locke, clerk, by H. L. Crane, deputy clerk.

In the Circuit Court of the United States for the Southern District of Florida. In Chancery.

SALLIE FIELD SCOTT, ELIZA MADISON SCOTT, HARRIET B. JONES, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Sallie Hackley, Maria Hackley, Mary Hackley, Mary F. Hackley, Sallie Strachen Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley, and Stephen P. Hackley, Complainants,

vs.

LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, M. G. GIBBONS, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall, Defendants.

Bill for declaration of trust, etc.

The separate demurrer of S. Y. Finley, one of the defendants, to the bill of complaint and the amendment thereto in the above-entitled cause.

This defendant by protestation not confessing all or any of the matters and things in the above-named complainants' bill of complaint and amendment thereto contained, to be true in such manner and form as the same are therein set forth and alleged, does demur thereto and for cause of demurrer shows the following grounds of demurrer, viz:

1st. Because there is no equity in said bill of complaint and the amendment thereto as appears from the face thereof.

2nd. Because said bill of complaint and the amendment
84 thereto are vague, insufficient and indefinite and do not state facts sufficient to authorize a court of equity to take jurisdiction and to grant the relief prayed for against this defendant or any other relief.

3rd. Because said bill does not show any fraud or knowledge of fraud mistake, or illegality on the part of the defendant or his grantors as against said complainants or any facts constituting a fraudulent collusion to injure the complainants.

4th. Because said bill shows such laches as to preclude a court of equity from granting the relief prayed for, or any relief against this defendant.

5th. Because this suit is barred by the statute of limitation of the State of Florida, it appearing on the face of said bill and its exhibits that the alleged cause of action accrued more than four years before the commencement of this suit.

6th. Because it appears on the face of said bill and its exhibits that this defendant was adjudicated by the Land Department of the United States to be an innocent purchaser, and that this defendant derived title from the patentee of the United States by regular and legal devolution, without notice of any fraud, mistake or illegality

in the issuance of said patent on the part of this defendant or his grantors and that as such purchaser he is entitled to the protection of a court of equity, and that said bill and its amendment ought to be dismissed as against this defendant.

7th. Because said bill of complaint and its exhibits and the amendment thereto do not show such a right to the land therein mentioned as would authorize or require a court of equity to convert this defendant into a trustee for the complainants.

7th. Because the complainants' said bill and exhibits show that the Land Department of the United States has fully and finally adjudicated the matters set up in said bill, and said bill does not state facts sufficient to authorize a court of equity to review the said decision of the Land Department of the United States.

Wherefore this defendant prays to be dismissed from hence with his reasonable costs in this behalf expended.

S. Y. FINLEY,
In Pro. Per.

STATE OF FLORIDA, }
Alachua County. }

I, S. Y. Finley, counsel for myself in the above entitled cause do hereby certify that in my opinion the foregoing demurrer is well founded in law.

S. Y. FINLEY,
Att'y for Himself.

85 STATE OF FLORIDA, }
Alachua County. }

Personally appeared S. Y. Finley, one of the defendants in the above cause, who being duly sworn, on oath says that the foregoing demurrer is not interposed for the purpose of delay.

S. Y. FINLEY.

Sworn to and subscribed before me this the 28th day of February, 1901.

[NOTARIAL SEAL.]

E. C. F. SANCHEZ,
Notary Public, State at Large.

(Indorsed:) In the circuit court of the United States for the southern district of Florida. In chancery. Sallie Field Scott, *et al. vs.* Lizzie W. Carew *et al.* The separate demurrer of S. Y. Finley. Filed this 2nd day of March, A. D. 1901. E. O. Locke, clerk, by H. L. Crane, deputy clerk.

In the Circuit Court of the United States for the Southern District of Florida.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } In Chancery.

Now comes the complainant in above entitled cause and set for argument the demurrers filed herein.

FLEMING & FLEMING,
WM. H. & GEO. H. LAMAR,
MUNFORD AND ANDERSON,
Solicitors for Complainants.

(Indorsed:) In the circuit court of the U. S. for the southern district of Florida. In chancery. Sallie Field Scott *et al. vs.* Lizzie W. Carew *at al.* Setting demurrers for argument. Filed this 29 day of March, 1901. E. O. Locke, clerk, by H. L. Crane, deputy clerk. Fleming & Fleming, Wm. H. & Geo. H. Lamar, Munford & Anderson, solicitors for complainants.

86 In the Circuit Court of the United States for the Southern District of Florida.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } In Chancery.

Upon motion of the complainants in this cause, the defendants represented by their counsel, being present and not interposing objection thereto. It is ordered that complainants have leave to amend their bill by inserting on page 21 after the words "And that patent thereon was duly issued by the United States to Edward S. Carew, on July 30th, 1896, for lots 9 and 10, section 24, township 29 south range 18 east," the following paragraph:

Your complainants further allege that the said decision of the Secretary of the Interior awarding the right to enter the said land was based upon erroneous conclusions of law, and that said patent was issued illegally and in mistake of the law, and in violation of the rights of your complainants.

Done in open court this 29th day of November, 1901.

JAMES W. LOCKE, *Judge.*

(Indorsed:) In the circuit court of the United States for the southern district of Florida. In chancery. Sallie Field Scott *et al. vs.* Lizzie W. Carew *et al.* Order allowing amendment. Filed Nov. 29, 1901. E. O. Locke, clerk, by E. D. Dodge, deputy clerk.

In the Circuit Court of the United States for the Southern District of Florida.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } In Chancery.

And now come the complainants and by leave of the court first had, hereby amend the bill of complaint in this cause by inserting therein on page 21 after the words "and that patent thereon was duly issued by the United States to Edward S. Carew, on July 30th, 1896, for lots 9 and 10, section 24, township 29, south range 18 east," the following paragraph:

Your complainants further allege that the said decision of the Secretary of the Interior awarding the right to enter the said
87 land as aforesaid was based upon erroneous conclusion of law and that said patent was issued illegally and in mistake of the law and in violation of the rights of your complainants.

FLEMING & FLEMING,
MUNFORD, HUNTON,
WILLIAMS & ANDERSON,
W. H. LAMAR,
GEORGE H. LAMAR,
Complainants' Solicitors.

We acknowledge service of notice to amend the bill as above set forth, Nov. 29th, 1901.

W. W. HAMPTON,
E. R. GUNBY,
Solicitors for Def'ts Except Finley.
S. Y. FINLEY,
In Pro. Per.

(Indorsed:) In the circuit court of the United States for the southern district of Florida. Sallie Field Scott *et al. vs.* Lizzie W. Carew *et al.* Amendment to bill. Filed Dec. 3rd, 1901. E. O. Locke, clerk.

Circuit Court of the United States, Southern District of Florida.

NOVEMBER 29TH, 1901.

Present: Honorable James W. Locke, district judge.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } In Chancery.

The demurrer to the bill herein is argued by respective counsel, and is continued.

NOVEMBER 30TH, 1901.

The demurrer to the bill herein is argued by respective counsel, and continued.

DECEMBER 2ND, 1901.

The demurrer to the bill herein is argued by respective counsel, and continued.

DECEMBER 3RD, 1901.

The demurrer to the bill herein is argued by respective counsel, and submitted.

(Minute Book "E," pages 365 *et seq.*)

88 In the Circuit Court of the United States in and for the Southern District of Florida.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL.

This cause coming on to be heard upon the demurrers to the bill of complaint herein, and having been fully heard and duly considered, it is ordered that said demurrers be and they are hereby sustained, and the bill of complaint dismissed.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., February 7th, 1901.

(Indorsed:) United States circuit court, southern district of Florida. Sallie Field Scott *et al. vs.* Lizzie W. Carew *et al.* Order sustaining demurrer. Filed Feb'y 7th, 1902. E. O. Locke, clerk, by E. D. Dodge, deputy clerk.

In the Circuit Court of the United States in and for the Southern District of Florida.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL.

The rights contended for in this case depend upon the provisions of the act of April 22nd, 1826, and the construction placed thereon. In substance this act provided that every person who did actually inhabit and cultivate a tract of land situate in the Territory of Florida, "which tract is not rightfully claimed by any other person," shall be entitled to the right of pre-emption in the purchase of the same.

The Hon. Secretary of the Interior, in substance, so construed this act as to find that the land in question was so held and occupied in

accordance with law at the time of its passage as to except it from the effect of the right of pre-emption, which would otherwise have attached.

The determination of the question raised upon this point depends upon what construction it put upon the language found in the act: "which tract is not rightfully claimed by any other person."

The bill shows that Robert J. Hackley, the ancestor of the complainants, had entered upon and was occupying the land in
89 question not under claim of right but simply as a settler, when Col. George M. Brooke in command of the U. S. troops entered upon and took possession of the same in February, 1824, and ousted the settler, and that such possession and occupation was continued and was continuing at the time of the passage of the act in question.

The Secretary of the Interior finds as a matter of fact that this land known as the Ft. Brooke military reservation was occupied under the direction of the Secretary of War, two years before the passage of the act upon which the claim of the Hackley heirs is predicated, and that court is bound by such findings of fact.

It is the contention of the complainants that the language used in the act should be held to apply only to the claim of some private individual claiming against the Government for his own interest.

This contention cannot be accepted, notwithstanding the earnest and able argument of counsel, which has been carefully examined and considered. The language of the act is sufficiently broad to cover any claim in force at the time of its passage rightfully made by any person in any capacity or in any character.

There is nothing to show either in its form or connection that it was to be limited to a private claim, or that it might not be intended to apply to a tract of land at that time rightfully claimed, occupied and used by an officer of the Government for the purposes and in the interest of the Government.

I therefore find that the construction placed upon the act of 1826 by the Honorable Secretary of the Interior is not so in violation of the principles of law as to demand a reversal, but that the land in question was rightfully claimed used, occupied and held by some person, in behalf of the United States at the time of the passage of the act of 1826, so as to prevent any attachment of a right to pre-emption claimed to have been granted by that act to the ancestor of the complainants, and the demurrer must be sustained, and as it appears that such conclusion reaches the whole equity of the complainants' case, which no amendment can change, the bill must be dismissed, and it will be so ordered.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., February 7th, 1902.

(Indorsed:) United States circuit court, southern district of Florida. Sallie Field Scott, *et al. vs.* Lizzie W. Carew, *et al.* Opinion. Filed Feb. 7, 1902. E. O. Locke, clerk.

90 In the Circuit Court of the United States for the Southern District of Florida.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } In Chancery.

And now, to wit, on this 1st day of March, 1902, come the complainants, by their solicitors, and say that in the record and proceedings in the above entitled cause there is manifest error, to-wit:

1st. The court erred in rendering its final decree in this case.

2nd. The court erred in its finding that the land in question was rightfully claimed, used, occupied, and held by some person in behalf of the United States, at the time of the act of 1826, (the same being an act entitled "An act giving the right of pre-emption, in the purchase of lands, to certain settlers in the States of Alabama, Mississippi, and Territory of Florida"), so as to prevent any attachment of a right to pre-emption claimed to have been granted by that act to the ancestor of the complainants.

3rd. The court erred in sustaining the demurrer of the defendants to the bill of complaint.

4th. The court erred in dismissing the bill of complaint.

WILLIAM H. LAMAR,
GEORGE H. LAMAR,
FLEMING & FLEMING,
MUNFORD, HUNTON,
WILLIAMS & ANDERSON,
Solicitors for Complainants.

(Indorsed:) In the circuit court of the United States, for the southern district of Florida. In chancery. Sallie Field Scott, *et al*, *vs.* Lizzie W. Carew, *et al*. Assignment of errors. Filed Mar. 1st, 1902. E. O. Locke, clerk.

91 In the Circuit Court of the United States for the Southern District of Florida.

SALLIE FIELD SCOTT, ELIZA MADISON SCOTT, Harriet B. Jones, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley and Elizabeth Madison Morrison, Infants, by Their Next Friend, Hugh S. Morrison; Maria Hackley, Mary and Sallie Hackley, Infants, by Their Next Friend, Mary Hackley; Mary F. Hackley, Sallie Strachan Hackley, Gertrude, Thomas H., and Stephen P. Hackley, Infants, by Their Next Friend, Mary F. Hackley, and Alexander S. Hackley	In Chancery.
vs	
LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, M. G. Gibbons, M. M. Nelson, E. B. Beach, S. Y. Finley, and George W. Hall.	

And now on this 1st day of March, 1902, in open court, at the December term for 1901, come the above named complainants, who conceiving themselves to be aggrieved by the decree entered on the 7th day of February, 1902, in the above entitled cause, do hereby appeal from said decree to the United States circuit court of appeals for the fifth circuit. And they pray that their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States court of appeals.

WILLIAM H. LAMAR,
GEORGE H. LAMAR,
FLEMING & FLEMING,
MUNFORD, HUNTON,
WILLIAMS & ANDERSON,
Solicitors for Complainants.

And now, to-wit, on this first day of March, 1902, it is ordered that the appeal as above prayed for be allowed, and that the complainants, or one of them, shall give a bond with good and sufficient security, in the sum of two hundred and fifty dollars, that the complainants shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their plea good.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., March 1st, 1902.

92 (Indorsed:) In the circuit court of the United States, for the southern district of Florida. In chancery. Sallie Field Scott, *et al.*, *vs.* Lizzie W. Carew, *et al.* Appeal and allowance. Filed Mar. 1, 1902. E. L. Locke, clerk.

Know all men by these presents, that we Hugh S. Morrison, as principal, and the United States Fidelity — Guaranty Company as surety, are held and firmly bound unto Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley and George W. Hall, in the full and just sum of two hundred and fifty dollars, to be paid to the said Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley and George W. Hall, their certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 29th day of March, in the year of our Lord, one thousand nine hundred and two.

Whereas, lately at a term of the circuit court of the United States for the southern district of Florida, in a suit depending in said court, between Sallie Field Scott, Eliza Madison Scott, Harriet B. Jones, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Maria Hackley, Sallie Hackley, Mary F. Hackley, Sallie Stranchan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley and Stephen P. Hackley, complainants, and Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley and George W. Hall, defendants, a decree was rendered against the said Sallie Field Scott, Eliza Madison Scott, Harriet B. Jones, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Maria Hackley, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley and Stephen P. Hackley, and the said last named parties having, in open court, at the same term of said court, obtained an appeal to reverse the decree in the aforesaid suit to a United States circuit court of appeals, for the fifth circuit, to be holden at New Orleans.

Now the condition of the above obligation is such, that if the said Sallie Field Scott, Eliza Madison Scott, Harriet B. Jones, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley
93 Morrison, Elizabeth Madison Morrison, Maria Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas F. Hackley and Stephen P. Hackley shall prosecute their appeals to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

HUGH S. MORRISON, [SEAL.]
UNITED STATES FIDELITY & GUARANTY CO.,
By F. P. FLEMING,
A. W. BARRS,
[CORPORATE SEAL.] *Att'ys in Fact.*

Sealed and delivered in presence of
HENRY W. ANDERSON.

11—52

Approved this 31st day of March, 1902.

JAMES W. LOCKE, *Judge.*

(Indorsed:) In the circuit court of the United States for the southern district of Florida. Sallie Field Scott, *et als.*, *vs.* Lizzie W. Carew *et als.* Appeal bond. Filed Mar. 31, 1902. E. O. Locke, clerk.

In the Circuit Court of the United States for the Southern District of Florida.

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } In Chancery.

The complainants in this cause having entered their *appear* (appearance) from the final decree of this court to the United States circuit court of appeals for the fifth circuit, and the said complainants, or one of them, in order to perfect said appeal, being required to give bond with a good and sufficient security in the sum of two hundred and fifty dollars, conditioned to prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, and such bond having been presented to this court, the same is hereby approved and accepted, and the said appeal is hereby allowed.

Done in open court this 31st day of March, A. D. 1902.

JAMES W. LOCKE, *Judge.*

(Indorsed:) In the circuit court of the United States, for the southern district of Florida. In chancery. Sallie Field
94 Scott, *et al.*, *vs.* Lizzie W. Carew, *et al.* Approval of bond and allowance of appeal. Filed Mar. 31, 1902. E. O. Locke, clerk.

In the Circuit Court of the United States, Fifth Circuit, Southern District of Florida.

SALLIE FIELD SCOTT ET ALS.
vs.
LIZZIE W. CAREW ET ALS.

I, Eugene O. Locke, clerk of the circuit court of the United States for the southern district of Florida, hereby certify that the foregoing typewritten pages, and part pages, numbered from one to one hundred and thirty-two, inclusive, are a true copy of the record, assignments of errors, and all proceedings in the above entitled cause had in said court, as appears from the records and files in my office.

In testimony whereof I hereunto set my hand officially, and affix

the seal of said court, at Jacksonville, in said district, this twelfth day of April, A. D. 1902.

[SEAL.] EUGENE O. LOCKE, *Clerk.*

95 United States Circuit Court of Appeals, Fifth Circuit.

November Term, 1902, Jan. 21, 1903.

(Extract from minutes.)

SALLIE F. SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } No. 1160.

On this day this cause was regularly called, and after argument by Henry W. Anderson, Esq., for appellants, and Horatio Bisbee, Esq., and Wm. Wade Hampton, Esq., for appellees, the further hearing was continued until Monday, January 26, 1903.

November Term, 1902, Jan. 26, 1903.

(Extract from minutes.)

SALLIE F. SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } No. 1160.

On this day this cause came on further to be heard, and after argument by Wm. Wade Hampton, Esq., and E. R. Gunby, Esq., for appellees, and Francis P. Fleming, Esq., for appellants, was submitted to the court upon record and briefs.

96 November Term, 1902, March 24, 1903.

(Extract from minutes.)

SALLIE FIELD SCOTT ET AL.
vs.
LIZZIE W. CAREW ET AL. } No. 1160.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Florida, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the appellants, Sallie Field Scott, Eliza Madison Scott, Harriet B. Jones, Freeman Jones, Lucia Beverly Barnard, Hugh S. Morrison, Hackley and Elizabeth Madison Morrison, infants, by their next friend, Hugh S. Morrison, Maria Hackley, Mary and Sallie Hackley, infants, by their next friend, Mary Hackley, Mary F. Hackley, Sallie Strachan Hackley, Gertrude, Thomas H. and Stephen P. Hackley, infants, by their next friend, Mary F. Hackley and Alexander S. Hackley, and the surety on the appeal bond herein, United States Fidelity & Guaranty Co., be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

March 24, 1903.

97 Original filed March 24, 1903.

CHARLES H. LEDNUM, *Clerk.*

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1902.

SALLIE FIELD SCOTT ET ALS., Appellants,
v.
LIZZIE W. CAREW ET ALS., Appellees. } No. 1160.

Appeal from the United States circuit court, southern district of Florida.

Before Pardee, McCormick, and Shelby, circuit judges.

By the COURT: After a careful examination and consideration of the elaborate decisions of Mr. Secretary Noble, Mr. Secretary Smith, Mr. Secretary Bliss and Judge Locke, all found in the transcript and all adverse to the claims of the appellants, and a study of the very able briefs filed by eminent counsel, we are of opinion that the judge of the circuit court properly ruled in sustaining the demurrer to the complainant's bill, and therefore the judgment appealed from is affirmed.

98 In the United States Circuit Court of Appeals for the Fifth Circuit.

SALLIE FIELD SCOTT, ELIZA MADISON SCOTT, HARRIET B. JONES, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Maria Hackley, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley, and Stephen P. Hackley, Complainants and Appellants,

versus

LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, M. G. GIBBONS, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall, Defendants and Appellees.

Assignment of Errors.

Now come the above named complainants and appellants, Sallie Field Scott, Eliza Madison Scott, Harriett B. Jones, Freeman Jones, Lucia Beverly Bernard; Hugh S. Morrison; Hackley Morrison; Elizabeth Madison Morrison; Maria Hackley; Mary Hackley; Sallie Hackley; Mary F. Hackley; Sallie Strachan Hackley; Alexander S. Hackley; Gertrude Hackley; Thomas H. Hackley and Stephen P. Hackley, and make and file the following assignment of errors upon which they will rely in their appeal from the decree of the court above named, made and entered herein on the 24th day of March, 1903, as follows, to wit:

99 I.

The court erred in affirming the decree of the circuit court made and entered in this cause on the 7th day of February, 1902.

II.

The court erred in not making and entering a decree in favor of complainants and appellants against the defendants and appellees, and in not requiring the defendants and appellees to convey to the complainants and appellants the land described in the bill of complaint in this cause, as amended, and to account to the complainants and appellants in accordance with the prayers of said bill as amended.

III.

The court erred in not making and entering a decree that the complainants and appellants were the equitable owners of the property described in the bill of complaint as amended, and entitled to a conveyance of the legal title thereto.

IV.

The court erred in holding that the land described in the bill of complaint as amended was rightfully claimed, used and occupied and held by some other person in behalf of the United States at the time of the act of 1826 (the same being entitled "An act giving the right of pre-emption in the purchase of lands to certain settlers in the States of Alabama, Mississippi, and Territory of Florida") so as to prevent the attachment of a right of pre-emption claimed in said bill of complaint as amended to have been granted by said act to Robert J. Hackley, the ancestor of the complainants and appellees.

100 V.

The court erred in sustaining the demurrer of the defendants and appellees to the bill of complaint as amended, of the complainants and appellants.

VI.

The court erred in holding and adjudging that the defendants and appellees were entitled to recover costs herein and said decree is erroneous in adjudging and decreeing that the defendants and appellees should recover of the complainants and appellants costs of this cause in said court, and that an execution might be issued out of the said circuit court therefor.

VII.

The court erred in dismissing the bill of complaint of the complainants and appellants and the decree is erroneous in so ordering and adjudging.

Wherefore, the complainants and appellants pray that the said decree of the United States circuit court of appeals for the fifth circuit, be reversed, with directions to render and enter a decree in favor of the complainants and appellants and against the defendants and appellees, in accordance with the prayers of this appeal and the prayers of the bill of complaint in this cause as amended.

FRANCIS P. FLEMING,
FRANCIS P. FLEMING, JR.,
BEVERLY B. MUNFORD,
EPPA HUNTON, JR.,
E. RANDOLPH WILLIAMS,
HENRY W. ANDERSON,
WILLIAM H. LAMAR,
GEORGE H. LAMAR,
Solicitors for Complainants and Appellants, Sallie Field Scott et als.

101 The foregoing has the following endorsements, to-wit: No. 1160. In the United States circuit court of appeals for the fifth circuit. Sallie Field Scott *et als.*, complainants & appellees, *vs.* Lizzie W. Carew, *et als.*, defendants & appellees. Assignment of errors. Filed 14 day of May, 1903, Charles H. Lednum, clerk of the United States circuit court of appeals.

102 In the United States Circuit Court of Appeals for the Fifth Circuit.

SALLIE FIELD SCOTT, ELIZA MADISON SCOTT, Harriett B. Jones, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Maria Hackley, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley, and Stephen P. Hackley	In Chancery.
versus	
LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall.	

Petition for Appeal.

Now come Sallie Field Scott; Eliza Madison Scott; Harriett B. Jones, Freeman Jones; Lucia Beverly Bernard; Hugh S. Morrison; Hackley Morrison; Elizabeth Madison Morrison; Maria Hackley; Mary Hackley; Sallie Hackley; Mary F. Hackley; Sallie Strachan Hackley; Alexander S. Hackley; Gertrude Hackley; Thomas H. Hackley and Stephen P. Hackley, complainants and appellants in the above entitled cause, and conceiving themselves aggrieved by the decree made and entered by the United States circuit court of appeals for the fifth circuit in the above entitled cause on the 24th day of March, 1903, affirming the decree of the circuit court made and entered in said cause on the 7th day of February, 1902, do hereby appeal from said decree of the said United States circuit court of appeals for the fifth circuit, to the Supreme Court of the United States, and these appellants pray that said appeal may be allowed and that a transcript of the record and proceedings herein and upon which said de-
103 cree was made and entered, duly authenticated may be transmitted to the United States Supreme Court.

FRANCIS P. FLEMING,
FRANCIS P. FLEMING, JR.,
BEVERLY B. MUNFORD,
EPPA HUNTON, JR.,
E. RANDOLPH WILLIAMS,
HENRY W. ANDERSON,
WILLIAM H. LAMAR,
GEORGE H. LAMAR,
Solicitors for Complainants and Appellants, Sallie Field Scott et als.

Dated May 9, 1903.

And now, to wit, on this 11th day of May, 1903, it is ordered that the above appeal in the above entitled cause be and it is hereby allowed as prayed.

EDWARD D. WHITE,
Associate Justice U. S. Supreme Court.

Dated May 11th, 1903.

The foregoing has the following endorsements, to wit: No. 1160. In the United States circuit court of appeals, for the fifth circuit. Sallie Field Scott *et als.*, complainants & appellants, *vs.* Lizzie W. Carew, *et als.*, defendants &. appellees. Appeal and allowance. Filed 14 day of May, 1903, Charles H. Lednum, clerk of the United States circuit court of appeals.

104 In the United States Circuit Court of Appeals for the Fifth Circuit.

SALLIE FIELD SCOTT, ELIZA MADISON SCOTT, HARRIETT B. JONES, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Maria Hackley, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley, and Stephen P. Hackley, Complainants and Appellants,

versus

LIZZIE W. CAREW, W. W. HAMPTON, E. R. GUNBY, M. G. GIBBONS, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall, Defendants and Appellees.

Order Fixing Amount of Appeal Bond.

The complainants and appellants in the above entitled cause, having this day filed their petition for appeal from the decree made and entered herein on the 24th day of March, 1903, to the Supreme Court of the United States, together with an assignment of errors in due form, and said petition and appeal having this day been allowed,

Now, therefore, it is ordered that the appeal bond herein be and it is hereby fixed at the sum of five hundred dollars, conditioned to the effect that the said complainants and appellants shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them if they shall fail to make
105 their plea and appeal good. Said bond having been by me approved.

EDWARD D. WHITE,
Associate Justice Supreme Court of the United States.

The foregoing has the following endorsements, to-wit: No. 1160. In the United States circuit court of appeals for the fifth circuit. Sallie Field Scott, *et als.*, complainants & appellants, *vs.* Lizzie W. Carew, *et als.*, defendants and appellees. Order fixing amount of appeal bond. Filed 14 day of May, 1903. Charles H. Lednum, clerk of the United States circuit court of appeals.

106 Know all men by these presents, that we, Hugh S. Morrison, as principal, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley and George W. Hall, in the full and just sum of five hundred dollars, to be paid to the said Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall, their certain attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 6th day of May, in the year of our Lord, 1903.

Whereas, lately at a term of the United States circuit court of appeals for the fifth district, in a suit pending in said court between Sallie Field Scott, Eliza Madison Scott, Harriett B. Jones, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley and Stephen B. Hackley, complainants and appellants; and Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley and George W. Hall, defendants and appellees, a decree was rendered against the said Sallie Field Scott, Eliza Madison Scott, Harriett B. Jones, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley and Stephen B. Hackley; and the said last named parties
107 having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley and George W. Hall, citing them and admonishing them to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said Sallie Field Scott, Eliza Madison Scott, Harriett B. Jones, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley and Stephen B Hackley,

shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

HUGH S. MORRISON. [SEAL.]
[SEAL.] THE UNITED STATES FIDELITY & GUARANTY CO.,
By EDW. J. PENNIMAN, *2nd Vice-President.*

Attest: H. V. D. JOHNS,
2nd Ass't Secretary.

Sealed and delivered in presence of:
H. W. ANDERSON.

Approved by
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

108 STATE OF MARYLAND, *City of Baltimore,* } *ss:*

On this — day of —— 1903; before me appears Edw. J. Penniman, 2nd vice president of the United States Fidelity and Guaranty Company, of Baltimore City, Maryland, with whom I am personally acquainted, who being by me duly sworn, says that he is 2nd vice president of the United States Fidelity and Guaranty Company; that he knows the corporate seal of the company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by the order of the board of directors of said company; that he signed said instrument as 2nd vice president of said company by like authority. The said Edw. J. Penniman further says that he is acquainted with H. V. D. Johns and knows him to be the 2nd ass't secretary of the said The United States Fidelity and Guaranty Company; that the signature of the said H. V. D. Johns subscribed to the said instrument is the genuine handwriting of the said H. V. D. Johns and was thereto subscribed by like order of the said board of directors.

My commission expires first Monday in May 1904.

A. D. PATRICK,
[SEAL.] *Notary Public.*

The foregoing has the following endorsements, to-wit: No. 1160. In the United States circuit court of appeals fifth district. Sallie Field Scott & others *vs.* Lizzie W. Carew & others. Appeal bond. Filed 14 day of May, 1903. Charles H. Lednum, clerk of the United States circuit court of appeals.

109 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 109 pages, numbered from A to 108, inclusive, contain a true copy of the record, assignment of errors and all proceedings in the case, including the opinion of the court, in the case of Sallie Field Scott *et al.*, appellants, *versus* Lizzie W. Carew, *et al.*, appellees, No. 1160, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans Louisiana, this 21st day of May, 1903.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

110 UNITED STATES OF AMERICA, *ss:*

To Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal, filed in the clerk's office of the United States circuit court of appeals, for the fifth circuit, wherein Sallie Field Scott, Eliza Madison Scott, Harriett B. Jones, Freeman Jones, Lucia Beverly Bernard, Hugh S. Morrison, Hackley Morrison, Elizabeth Madison Morrison, Mary Hackley, Sallie Hackley, Mary F. Hackley, Sallie Strachan Hackley, Alexander S. Hackley, Gertrude Hackley, Thomas H. Hackley, and Stephen P. Hackley, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglas White, associate justice of the Supreme Court of the United States, this eleventh day of May, in the year of our Lord one thousand nine hundred and three.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

111 [Endorsed:] No. 1160 Original Mar. doc. 201 Sallie Field Scott *et al. v.* Lizzie W. Carew *et al.* Citation to appellees. U. S. circuit court of appeals Filed Jun- 4 1903 Charles H. Lednum clerk.

On this 25th day of May, in the year of our Lord one thousand nine hundred and three, personally appeared John R. Williams before me, the subscriber, as deputy United States marshal in and for the southern district of Florida, at Tampa, Florida, and makes oath that he delivered a true copy of the within citation to E. R. Gunby, William Hunter and M. G. Gibbons, Esqs., residing at Tampa, Florida, in the southern district of Florida.

JOHN F. HORR,
U. S. Marshal,
By JOHN R. WILLIAMS,
Dept. Marshal.

Sworn to and subscribed the 25 day of May, A. D. 1903.

[Seal of U. S. Circuit Court, South. Dist. Florida.]

E. O. LOCKE, *Clerk,*
By H. E. CRANE,
Deputy Clerk.

Served
H. BISBEE.

112 On this 29th day of May in the year of our Lord one thousand nine hundred and three personally appeared Hampton S. Chambers before me, the subscriber as deputy United States marshal in and for the southern district of Florida at Ocala Florida, and makes oath that he delivered a true copy of the within citation to William Wade Hampton on May the 28 A. D. 1903 residing at Gainesville Florida in the southern district of Florida

JOHN F. HORR, *U. S. Marshal,*
By HAMPTON S. CHAMBERS,
Dept. Marshal.

Sworn to and subscribed the 29th day of May A. D. 1903.

{ Seal of D. S. Williams, U. S. Commissioner, }
{ Southern District of Florida. }

DAVID S. WILLIAMS.
United States Commissioner, Southern District of Florida.

113 On this 2nd day of June, in the year of our Lord one thousand nine hundred and three, personally appeared before the clerk of the United States circuit court for the southern district of Florida, John R. Williams, a deputy United States marshal in and for the southern district of Florida at Tampa, Florida, and makes oath that on May 25th, 1903 at Tampa, Florida, he delivered a true copy of the within citation to E. R. Gunby, William Hunter, and M. G. Gibbons, Esqs., residing at Tampa, Florida, in the southern district of Florida, who are attorneys and solicitors of record for the within named Lizzie W. Carew, W. W. Hampton, E. R. Gunby,

M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall appellees in the within named cause, in the United States circuit court of appeals for the fifth circuit.

JOHN R. WILLIAMS,
U. S. Deputy Marshal.

Sworn to and subscribed the 2nd day of June, A. D. 1903.

[Seal of U. S. Circuit Court, South. Dist. Florida.]

E. D. DODGE,
Deputy Clerk U. S. Circuit Court.

114 On the 2nd day of June, in the year of our Lord one thousand nine hundred and three, personally appeared before me clerk of the United States circuit court for the southern district of Florida, Percy C. Stickney a deputy United States marshal in and for the southern district of Florida, and makes oath that on May 22nd, 1903, at Jacksonville, Florida, he delivered a true copy of the within citation to Horatio Bisbee, Esq., residing at Jacksonville, Florida, in the southern district of Florida, who is an attorney and solicitor of record for the within named Lizzie W. Carew, W. W. Hampton, E. R. Gunby, M. G. Gibbons, M. M. Nelson, E. C. Beach, S. Y. Finley, and George W. Hall appellees in the within named cause, in the United States circuit court, of appeals for the fifth circuit.

PERCY C. STICKNEY,
Deputy U. S. Marshal.

Sworn to and subscribed the 2nd day of June, A. D. 1903.

[Seal of U. S. Circuit Court, South. Dist. Florida.]

E. D. DODGE,
Deputy Clerk U. S. Circuit Court.

Endorsed on cover: File No. 18,966. U. S. circuit court of appeals, 5th circuit. Term No. 52. Sallie Field Scott, Eliza Madison Scott, Harriett B. Jones, *et al.*, appellants, *vs.* Lizzie W. Carew, W. W. Hampton, E. R. Gunby, *et al.* Filed June 6, 1903. File No. 18,966.